

## **Title IX Sexual Harassment Policy (Revised February 2025)**

Albright does not discriminate on the basis of sex in its education program or activity, and it is required by Title IX not to discriminate in such a manner. This requirement extends to admissions, matriculation, and employment. Inquiries about the application of Title IX to Albright may be referred to Albright's Title IX Coordinator, to the Assistant Secretary of the U.S Department of Education, or both.

These policies and procedures control how Albright handles all matters of sexual harassment under Title IX for students, employees, and faculty. These policies and procedures should be interpreted to incorporate any changes needed to make them consistent with Title IX.

### **A. Definitions of Sexual Harassment, Complainant, Respondent**

1. Sexual harassment means conduct on the basis of sex which satisfies one or more of the following:

(a) An Albright employee conditioning the provision of an aid, benefit, or service of the College on an individual's participation in unwelcome sexual conduct.

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

(c) Sexual assault. Sexual assault is an offense classified as a forcible or nonforcible sex offense under either the Summary Reporting System (SRS) or the National Incident-Based Reporting System (NIBRS) of the Uniform Crime Reporting (UCR) system of the Federal Bureau of Investigation (FBI). Per the UCR, examples of sexual assault include, but are not limited to, the following:

- Forcible Rape (Except Statutory Rape): The carnal knowledge of a person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her temporary or permanent mental or physical incapacity.
- Sexual Assault With An Object: To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.
- Forcible Fondling: The touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent.
- Statutory Rape: Nonforcible sexual intercourse with a person who is under the statutory age of consent.

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(d) **Dating Violence.** Dating Violence means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on a consideration of the following factors: (a) The length of the relationship, (b) the type of relationship, and (c) the frequency of interaction between the persons involved in the relationship.

(e) **Domestic Violence.** Domestic Violence includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of Pennsylvania, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of Pennsylvania.

(f) **Stalking.** Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety, or the safety of others, or suffer substantial emotional distress.

2. A Complainant is an individual who is alleged to be the target of conduct that could constitute sexual harassment.

3. A Respondent is an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

### **B. Filing a Report with the Title IX Coordinator**

Any person may report sexual harassment to the Title IX Coordinator. The Title IX Coordinator can be reached in person, by mail, by telephone, by email, or by any other means that results in them receiving a verbal or written report. A report can be made at any time of day, including during non-business hours.

Mr. James Gaddy is Albright's Title IX Coordinator and can be contacted at:

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Interim Vice President of Administration  
1801 N. 12th Street  
Camp Building 2nd floor  
Reading, PA 19612  
610-921-7629  
[jgaddy@albright.edu](mailto:jgaddy@albright.edu)

Please note that filing a report of sexual harassment is not the same as filing a formal complaint. The procedures for filing a formal complaint are described in Section D below.

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Albright requires that its Title IX Coordinator have no conflict of interest or bias for or against Complainants or Respondents generally, as well no conflict of interest or bias for or against any individual Complainant or Respondent.

### **C. Supportive Measures**

Supportive measures are non-disciplinary, non-punitive, individualized services offered as appropriate and as reasonably available, without fee or charge, to the Complainant or the Respondent before or after the filing of a formal complaint or even where no formal complaint has been filed. These measures are designed to restore or preserve equal access to Albright's education program or activity without unreasonably burdening a party. These measures are also designed to protect the safety of all parties, Albright's educational environment, or to deter sexual harassment. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

Supportive measures may include but are not limited to: no contact orders, counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, changes in work or housing locations and leaves of absence.

Albright will maintain as confidential any supportive measures provided to a Complainant or Respondent to the extent that maintaining such confidentiality would not impair the College's ability to provide the supportive measure.

Upon notice of allegations of sexual harassment, Albright is committed to treating Complainants and Respondents equitably. Even before the filing of any formal complaint, when the College receives a report of allegations involving sexual harassment, the Title IX Coordinator will contact the Complainant to discuss possible supportive measures available with or without filing a formal complaint, the Complainant's wishes regarding supportive measures, and the process for filing a formal complaint. Similarly, to treat the Respondent equitably, no disciplinary sanctions or other actions that are not supportive measures will be applied against a Respondent prior to the conclusion of Albright's grievance process.

### **D. Filing a Formal Complaint**

A Complainant may file a formal complaint only with the Title IX Coordinator. At the time of filing a formal complaint, the Complainant must be participating in or attempting to participate in an educational program or activity offered by Albright.

A formal complaint is a document or electronic submission from the Complainant to the Title IX Coordinator that (1) alleges sexual harassment against a Respondent(s), (2) requests that Albright investigate the allegation, and (3) includes the Complainant's physical or digital signature or otherwise indicates that the Complainant is the person filing the complaint. When filing a complaint, a Complainant may, but need not, identify a Respondent(s).

A Complainant may file a formal complaint with the Title IX Coordinator in person, by mail, or by electronic mail. Given that a formal complaint must be a document or an electronic

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submission (such as an email), it is not possible to file a formal complaint with the Title IX Coordinator by telephone.

At any time after filing a complaint, a Complainant may notify the Title IX Coordinator in writing that they would like to withdraw the complaint or any allegations contained in it. If the Title IX Coordinator has notice of allegations of sexual harassment, the Title IX Coordinator may choose to file a formal complaint even if a Complainant chooses not to file one (or in the event that the Complainant withdraws a complaint).

### **E. Written Notice after a Formal Complaint**

After a formal complaint is filed, and before any initial interviews, Albright will provide a written notice to the parties who are known.

The written notice will contain:

- An overview of how Albright investigates and adjudicates formal complaints, rights regarding an appeal, and any applicable informal resolution process that may be available.
- Sufficient details surrounding the allegations of sexual harassment. These details will include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident, if known.
- Notice that the Respondent is presumed not responsible for the alleged conduct until a determination is made at the end of Albright's grievance process.
- Notice that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney.
- Notice that, after its investigation, Albright will provide both parties, and if they have any advisors their advisors, any evidence obtained that is directly related to the allegations raised so that the parties can inspect and review it.
- Any applicable provisions from the Compass Student Handbook, Employee Handbook, and/or Faculty Handbook applicable to a party that prohibits that party from knowingly making false statements or knowingly submitting false information throughout the grievance process.

### **F. Informational Meeting**

Informational meetings are scheduled separately with both the Complainant and the Respondent.

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No informational meeting will be scheduled earlier than 7 business days after the Written Notice is delivered to both the Complainant and the Respondent so that the parties have sufficient time to prepare a response.

The Title IX Coordinator will be present at the informational meeting.

As a part of the official records that Albright maintains regarding its investigation of incidents involving allegations of sexual harassment, the College may record the informational meeting. It will give notice to the parties when doing so. Given the College's duty to ensure the confidentiality of incidents involving allegations of sexual harassment, neither the Complainant or the Respondent is allowed to record the informational meeting.

At the informational meeting, the allegations will be discussed along with each party's rights. Supportive measures will also be reviewed with the Complainant and the Respondent. At the informational meeting, there will also be an opportunity to ask questions. Procedures for hearings will also be discussed. If they already have an advisor, a party may be accompanied by an advisor of their choice, but advisors may not appear in lieu of a party. Moreover, at the informational meeting, advisors may not speak for or on behalf of a party, present information, ask questions, or make statements. Advisors may only talk with their party or pass notes to their party in a non-disruptive manner. Apart from an advisor, family members, friends, and attorneys are not allowed at the informational meeting.

At the informational meeting, if the Complainant or the Respondent does not already have an advisor, there will be discussion of any advisors available through the College. Moreover, when it comes to the Complainant and the Respondent, there will be a discussion of the consequences of not selecting an advisor when it comes to any hearing. These consequences include being unable to conduct cross-examination of the other party, as well as being unable to cross-examine the other party's witnesses.

It is a party's responsibility to attend the informational meeting when notified. If a party should encounter difficulties attending the informational meeting, they should notify the Title IX Coordinator within 24 hours and reschedule the meeting.

During the informational meeting, the Respondent will have the right to accept, or deny, responsibility for the actions the Complainant alleges. If the Respondent accepts responsibility for their alleged actions, the College will issue an appropriate sanction. The Respondent will sign the charge form indicating that they accept full responsibility for the charges and will be required to fulfill any sanctions imposed for their actions. Respondents who accept responsibility during the informational meeting waive their rights to an investigation, a hearing, and the appeal process.

If the Respondent does not accept responsibility for violation of the charges, then a hearing will be scheduled after Albright completes its Investigative Report.

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### **G. Investigation and Investigative Report**

When investigating a formal complaint, Albright bears the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility, and it will consider, objectively, all relevant evidence. Albright also requires that its Investigators have no conflict of interest or bias for or against Complainants or Respondents generally, as well as that Investigators have no conflict of interest or bias for or against any individual Complainant or Respondent. Investigators will not make any credibility determinations based on a person's status as a Complainant, Respondent, or Witness. Investigators will also not ask questions or seek evidence that constitutes (or seek disclosure of) information protected under a legally recognized privilege, unless the person holding such privilege has waived that privilege in writing.

Throughout its investigation, Albright will provide both parties an equal opportunity to present witnesses, including fact and expert witnesses, as well as other inculpatory or exculpatory evidence. Moreover, Albright will not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence. As a general rule, the College will attempt to carry out and complete an investigation of a formal complaint within sixty (60) business days after the Title IX Coordinator has an Informational Meeting with both the Complainant and Respondent.

Any party or witness whose participation is invited or expected at any investigative interview or other meeting will be given written notice of the date, time, location, participants, and purpose of any interviews or meetings, as well as sufficient time to prepare to participate in any interviews or meetings.

If they already have an advisor, a party may be accompanied by an advisor of choice during investigative interviews or meetings, but advisors may not appear in lieu of a party. Moreover, advisors may not speak for or on behalf of a party, present information, ask questions, or make statements. Advisors may only talk with their party or pass notes to their party in a non-disruptive manner. Apart from an advisor, family members, friends, and attorneys are not allowed at investigative meetings.

In conducting its investigation, Albright will develop an Investigative Report. In developing its Investigative Report, the Investigator(s) will not make any final determination regarding responsibility.

Prior to the completion of the Investigative Report, the College will send (in an electronic format or hard copy) both parties and, if they have any advisors at this time, their advisors *any* evidence the Investigator(s) obtained that is directly related to the allegations raised, and the parties will have at least 10 business days to submit a written response. The Investigator(s) will consider any written responses from the parties before completing the Investigative Report.

Related, at least 10 business days prior to a hearing, Albright will send both parties, and, if they have any advisors at this time, their advisors an electronic or hardcopy of the final Investigative Report that fairly summarizes the relevant evidence, and the Parties will have the opportunity to

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submit a written response to this evidence. Any such response must be submitted within five (5) business days of obtaining the final report. When the College sends a copy of the final Investigative Report to the parties, it will also send a copy of the final Investigative Report, and any written responses it receives thereto, to the Hearing Board.

Furthermore, any evidence that Albright obtains as a part of its investigation will be available at the hearing so that both parties can inspect it, review it, and refer to it during the hearing. Parties will also be able to inspect, review, and refer to this evidence during the hearing for purposes of cross-examination.

Finally, the Investigator(s) will be present at the hearing as a witness. As a witness, at any hearing, the Investigator(s) will not make any recommendations regarding a final determination regarding responsibility. The Investigator(s) role at hearings is described further below in Section J "Board Hearings."

### **H. Hearing Board**

The Hearing Board hears any Title IX matters involving sexual harassment. Hearing Board members are trained as required by Title IX.

At no time should a Hearing Board member be involved in the decision-making process when they have a vested interest in the outcome of the case. Albright requires that no Board member have a conflict of interest or bias for an individual Complainant or Respondent. Any prior knowledge about the case or personal involvement with the Complainant, Respondent, or a witness that would give cause for a Board member to be biased or prejudiced in the decision-making process is sufficient justification for removing oneself, or for being removed, from the deliberations. Related, if any Board member has any bias for or against Complainants or Respondents generally, then that provides sufficient justification for removing oneself, or for being removed, from the deliberations.

It is the responsibility of every Board member to consider, objectively, all relevant evidence to reach a fair and just decision.

Parties have the right to an advisor at a hearing. This advisor may be any person of a Party's choice, and it may include, but is not limited to, a family member, a friend, a faculty member, or an attorney.

All hearings before any Hearing Board are confidential. Members of the Hearing Board are obliged to refrain from discussing cases with anyone other than fellow members. Unless the person is an advisor, family members, friends and attorneys are not permitted to sit in on a hearing. Only Board members, the Investigator(s), the Complainant(s), the Respondent(s), witnesses, advisors, or any other individuals that the College deems appropriate are allowed in the hearing room.

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Hearings will be digitally recorded or, at the Chairperson's discretion, recorded by a court reporter, and parties have a right to inspect and review any digital recording or transcript of the hearing.

### **I. Hearing Board Membership**

The Hearing Board shall have a Chairperson. The Chairperson is a voting member of the Board. The Chairperson will guide the hearing along in an orderly fashion. All relevancy determinations will be made by the Board as a whole, and the Chairperson will serve as the public spokesperson on behalf of the Board's determinations.

A hearing may not commence unless a minimum of three Hearing Board members are present. In order to avoid tie-votes, any Hearing Board must have an odd number of members, and all Board members must vote on all issues before them, including, but not limited to, issues of relevancy. Any Board will be composed of either three or five members.

Finally, Albright requires that no Board Member can be a Title IX Investigator(s) or Albright's Title IX Coordinator.

### **J. Board Hearings**

#### **Hearings Process**

- 1) Hearings will not occur any earlier than 10 business days after the completion of the final Investigative Report.
- 2) Hearings will begin exactly on time. A party should notify the Title IX Coordinator of any difficulties they may have getting to the hearing at the designated time and place.
- 3) If witnesses are to give statements at the hearing, both the Complainant and the Respondent must provide a list of witnesses (with contact information for each witness) to the Title IX Coordinator 7 business days prior to the scheduled hearing. Further, upon receipt of the Complainant and the Respondent's witness lists, the Title IX Coordinator will provide any witness who is invited to attend a hearing with a written notice of the date, time, location, participants, and purpose of the hearing, as well as sufficient time to prepare to participate in any hearing.

Finally, after receiving the Complainant and the Respondent's list of witnesses, the Title IX Coordinator will also provide the Hearing Board with these lists.

- 4) Albright will make recordings or transcripts of all hearings. Tapes or digital recordings or transcripts may be reviewed by College personnel external to the hearing if the decision is appealed. Albright's recording of the hearing will be available to the parties for their inspection and review.
- 5) Hearings are confidential.

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- 6) If the Complainant, Respondent, or any witness fails to appear without providing a good cause beforehand, the case may be heard without that person present.
- 7) The Complainant, Respondent, and witnesses will be administered an oath by the Chairperson. The giving of false information by a student, faculty member, administrator, or staff member is a serious matter and will lead to appropriate disciplinary action. All persons appearing before the Board shall be informed of this fact.
- 8) If a party attends a hearing without an advisor, Albright will offer to provide one free of charge. [At the Informational Meeting, students are requested to state if they need the College to appoint an advisor.]
- 9) At the hearing, each party's advisor will be permitted to ask the other party and any witnesses, including expert witnesses, all relevant questions, including follow-up questions. Each party's advisor will also be permitted to cross-examine the other party and the other party's witnesses.
- 10) There are only two situations where questions and evidence about a Complainant's sexual predisposition or prior sexual behavior are relevant: i) Where the questions and evidence are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, and ii) Where the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with the Respondent and are offered to prove consent. Beyond these two situations, questions about a Complainant's sexual predisposition or prior sexual behavior are not relevant.
- 11) While, at a hearing, the Board can ask relevant questions aimed to elicit information from parties and witnesses; unlike the Complainant's and Respondent's advisors, they cannot ask questions that challenge someone's plausibility, credibility, reliability, motives, or consistency.
- 12) Credibility determinations may not be based on a person's status as a Complainant, Respondent, or Witness.
- 13) Questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, may not be asked or used unless the person holding such privilege has waived that privilege in writing.
- 14) If a party or witness does not answer any questions, in making its final determination, the Board will not make any inference regarding responsibility based solely on a party or witness's refusal to answer questions. Similarly, if a party or a witness is absent from the hearing, in making its final determination, the Board will not make any inference regarding responsibility based solely on a party or witness's absence.
- 15) The Title IX Coordinator, or an Investigator, will have available at the hearing a written statement regarding the procedural steps that Albright took prior to the start of the hearing. This statement will include a description of any notifications made to the parties, interviews that were conducted with parties and witnesses, site visits, and methods used to

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gather other evidence. At the hearing, this written statement will be provided to the Board and a copy will be given to the parties. [Please note, that after a hearing, in its written determination, the Board will discuss not only the procedural steps taken prior to a hearing, but, in its discussion of the procedural steps, the Board will also add a discussion reviewing the hearing held.]

- 16) At Albright's discretion, any or all parties, witnesses, and other participants may appear at the hearing virtually through technology that enables all participants to simultaneously see and hear each other.
- 17) At the request of either party, Albright will provide for a live hearing to occur with the parties located in separate rooms with technology that enables the decision-maker(s) and parties to hear and see each other.
- 18) Upon receipt of the Complainant and the Respondent's witness lists prior to a hearing, the Board may ask the Title IX Coordinator to request that other witnesses be present at the hearing that are not called by the Complainant or the Respondent. Upon receiving such a request, the Title IX Coordinator will provide any witness who is invited to attend a hearing with a written notice of the date, time, location, participants, and purpose of the hearing, as well as sufficient time to prepare to participate in any hearing.

The Board also recognizes that anyone that it requests to be present at the hearing has the right to refuse to participate. Moreover, Albright will not intimidate, threaten, coerce, punish, retaliate against, or discriminate against anyone that exercises their right to refuse to participate in a hearing. To the extent that it is possible and practical for it to do so, if the Board requests any witnesses to be present at a hearing that are not called by the Complainant or the Respondent, the Title IX Coordinator will notify the Complainant and the Respondent, and their advisors, of such requests prior to a hearing.

- 19) At the commencement of a hearing, both the Complainant and the Respondent will be given the opportunity to challenge the participation of a specific hearing Board member on the grounds that a Board member has a bias against Complainants or Respondents generally or against the Complainant or Respondent individually.
- 20) During a hearing, if the Board believes that it would benefit from hearing from a witness not called by either the Complainant or the Respondent, the Board may either temporarily delay the hearing or schedule a continuation of the hearing at a future date so that the Board can ask the Title IX Coordinator to request that this witness be present. Upon receiving such a request, the Title IX Coordinator will provide any witness who is invited to attend a hearing with a written notice of the date, time, location, participants, and purpose of the hearing, as well as sufficient time to prepare to participate in any hearing.

The Board also recognizes that anyone that it requests to be present at the hearing has the right to refuse to participate. Moreover, Albright will not intimidate, threaten, coerce, punish, retaliate against, or discriminate against anyone that exercises their right to refuse to participate in a hearing. In the event that the Board temporarily delays a hearing or schedules a continuation of a hearing at a future date in an attempt to hear from a witness not requested by the Complainant or the Respondent, the Complainant and the

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Respondent and any necessary participants in a hearing will receive a written notice from the Title IX Coordinator explaining the reason for the delay in the hearing process and stating when the hearing will reconvene.

- 21) During a hearing, the Board has the right to temporarily delay a hearing or schedule a continuation of a hearing when there is good cause to do so. In the event that the Board temporarily delays a hearing or schedules a continuation of a hearing at a future date for good cause, the Complainant and the Respondent and any necessary participants in a hearing will receive a written notice from the Title IX Coordinator explaining the reason for the delay in the hearing process and stating when the hearing will reconvene.
- 22) During a hearing, the Board reserves the right to have its own attorneys or counsel present on its behalf.

### **Hearing Decorum**

Albright is committed to the respectful treatment of all individuals involved in a hearing. To that end, the following rules of decorum are to be followed at any hearing.

- 1) Everyone involved in a hearing must treat the other individuals present with dignity and respect.
- 2) All questions asked should be asked with a respectful tone.
- 3) After a question is asked by an advisor, before answering, the Complainant, the Respondent, and any witnesses should pause to see if the Board raises relevancy objections. The Board will make a determination regarding the relevancy of any questions asked, and the Complainant, the Respondent and any witnesses must follow the Board's directions when it comes to answering any questions deemed irrelevant.
- 4) No individual present at a hearing may act abusively or disrespectfully during the hearing toward any other individual.
- 5) During cross-examination, an advisor:
  - a. May not yell, scream, badger, or physically "lean in" to a party or witness's personal space;
  - b. May not approach the other party or witnesses without first obtaining permission from the Board;
  - c. May not use profanity or make irrelevant *ad hominem* attacks upon a party or witness;
  - d. May not continue to try to ask questions that the Board has already deemed irrelevant;
- 6) Advisors may not ask questions out of turn.

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- 7) To avoid disruption to the hearing, no one should leave the hearing room or any virtual meeting unless they first receive permission from the Board or unless the Board calls for a temporary break.
- 8) No one is allowed to wear any intimidating or harassing apparel or clothing to a hearing.
- 9) Those present at a hearing should remain silent unless they are called upon to speak by the Board or unless they are answering questions from a party's advisor. During a hearing, no party or witness or individual present is allowed to engage in disruptive activities including, but not limited to, loud whispering, applause, heckling, outbursts, the use of profanity, or other disruptive behavior.
- 10) Any cellular telephones or smartphones brought into a hearing room must be turned to the "OFF" setting during proceedings. Even phones on a "vibrate" setting can be disruptive.
- 11) The Respondent, the Complainant, any witnesses, and any advisors should not engage in any text messaging during a hearing.
- 12) Unless permission is granted by the Board, during a hearing, the Respondent, the Complainant, any witnesses, and any advisors should not engage in any communications of any sort with any individuals not present at the hearing.
- 13) Beyond the official transcript or recording of the hearing conducted by Albright, no individual is authorized to record a hearing.

If the Complainant, the Respondent, any witnesses, or any advisor violates any rules of decorum, the Board may exercise their discretion to issue what they deem to be an appropriate sanction. These sanctions may include, but are not limited to, a verbal warning. Alternatively, the Board, at their discretion, may temporarily adjourn the hearing. In such an event, the participants in a hearing will receive a written notice from Albright explaining the reason for the delay in the hearing process and stating when the hearing will reconvene.

### **Hearing Procedures**

- 1) Call to order by the Chairperson.
- 2) Verification of a minimum of three Board members, as well as an odd number of Board members.
- 3) The Chairperson will read the complaint against the Respondent. After reading the complaint, the Chairperson will remind everyone present that the Respondent is presumed not responsible for the alleged conduct until a determination of responsibility is made at the end of this grievance/hearing process. Moreover, the Chairperson will remind everyone that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on Albright College, not the Respondent or the Complainant. After making these reminders, the Chairperson will give the Respondent the opportunity to plead "responsible" or "not responsible" for each charge.

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- 4) If the Complainant or the Respondent fails to attend the hearing without providing good cause beforehand, the hearing will continue in his/her absence.
- 5) Complainant proceeds as follows.
  - (a) Complainant or Complainant's advisor makes opening statements, which shall include factual testimony supporting the charges.
  - (b) The Respondent's advisor may question the Complainant.
  - (c) After the Respondent's advisor questions the Complainant, the Board may question the Complainant.
  - (d) After the Board questions the Complainant, the Complainant's advisor will be given a final opportunity to question the Complainant.
  - (e) After the Complainant's advisor is given a final opportunity to question the Complainant, the Respondent's advisor will be given a final opportunity to cross-examine the Complainant.
- 6) Complainant's advisor calls witnesses one-by-one.
  - (a) Immediately after a witness is called and questioned by the Complainant's advisor, the Respondent's advisor will be given the opportunity to cross-examine that witness.
  - (b) After the Respondent's advisor cross-examines a witness, the Board will be given the opportunity to ask questions of that witness.
  - (c) After the Board asks questions of a witness, the Complainant's advisor will be given a final opportunity to question that witness.
  - (d) After the Complainant's advisor has a final opportunity to question a witness, the Respondent's advisor will be given a final opportunity to cross-examine that witness.
  - (e) Process (a)-(d) will repeat for each of the Complainant's witnesses until all of the Complainant's witnesses are questioned and cross-examined.
- 7) Respondent proceeds as follows.
  - (a) Respondent or Respondent's advisor makes opening statements, which shall include factual testimony rebutting the charges.
  - (b) The Complainant's advisor may question the Respondent.
  - (c) After the Complainant's advisor questions the Respondent, the Board may question the Respondent.
  - (d) After the Board questions the Respondent, the Respondent's advisor will be given a final opportunity to question the Respondent.
  - (e) After the Respondent's advisor is given a final opportunity to question the Respondent, the Complainant's advisor will be given a final opportunity to cross-examine the Respondent.
- 8) Respondent's advisor calls witnesses one-by-one.
  - (a) Immediately after a witness is called and questioned by the Respondent's advisor, the Complainant's advisor will be given the opportunity to cross-examine that witness.

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- (b) After the Complainant's advisor cross-examines a witness, the Board will be given the opportunity to ask questions of that witness.
  - (c) After the Board asks questions of a witness, the Respondent's advisor will be given a final opportunity to question that witness.
  - (d) After the Respondent's advisor has a final opportunity to question a witness, the Complainant's advisor will be given a final opportunity to cross-examine that witness.
  - (e) Process (a)-(d) will repeat for each of the Respondent's witnesses until all of the Respondent's witnesses are questioned and cross-examined.
- 9) The Board will call and question any witnesses that it requested come to the hearing that were not requested by either the Complainant or the Respondent. These witnesses will be called and questioned one-by-one.
- (a) After the Board calls and questions a witness, the Complainant's advisor will be given the opportunity to cross-examine that witness.
  - (b) After the Complainant's advisor is given the opportunity to cross-examine that witness, the Respondent's advisor will be given the opportunity to cross-examine that witness.
- 10) The Investigator(s) will serve as the last witness. As a witness, the Investigator(s) will not make any recommendations regarding a final determination regarding responsibility.
- (a) Complainant's advisor may question the Investigator(s).
  - (b) Respondent's advisor may question the Investigator(s).
  - (c) The Board may question the Investigator(s).
  - (d) The Complainant's advisor will be given a final opportunity to question the Investigator(s).
  - (e) The Respondent's advisor will be given a final opportunity to question the Investigator(s).
  - (f) If there are multiple Investigators, process (a)-(e) will repeat for each Investigator until all of the Investigators are questioned and cross-examined.
- 11) Closing statement by Complainant or Complainant's advisor.
- 12) Closing statement by Respondent or Respondent's advisor.
- 13) The Chairperson excuses all witnesses, advisors, the Complainant and the Respondent so that the Board can go into deliberations (confidential).
- 14) The Board shall review and evaluate, objectively, all relevant evidence under the standard of the "preponderance of the evidence."
- 15) The Board shall vote on each charge separately "responsible" or "not responsible."

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16) The Board has seven business days to render their decision and notify the Title IX Coordinator.

(a) Upon receipt of the decision, the Title IX Coordinator will notify, simultaneously, both parties of its decision, in writing, within two business days.

(b) The Complainant and the Respondent will then meet with the Title IX Coordinator if necessary to discuss the results of the case.

(c) Follow-up meetings may occur if necessary.

### **K. Written Notification of Hearing Outcomes**

The written determination will include:

- An identification of the allegations that potentially constituted sexual harassment.
- A description of the procedural steps that Albright took starting from the time it received the Complainant's formal complaint and ending with the period at which the Board reached its determination. This description of the procedural steps that Albright took will include a review of any notifications it made to the parties, interviews that were conducted with parties and witnesses, site visits, methods used to gather other evidence, and a review of hearings held.
- Findings of fact that support the determination reached.
- Conclusions the Hearing Board reached by applying its code of conducts to the facts.
- A statement and an explanation regarding the result reached for each allegation made by a Complainant.
- A determination regarding responsibility.
- A statement regarding any sanctions Albright will impose on the Respondent.
- A discussion regarding any remedies offered to the Complainant.
- An overview of the procedures and permissible reasons for either the Complainant or the Respondent to seek an appeal.

The Title IX Coordinator will bear the responsibility for the effective implementation of any remedies that are provided.

If the Respondent is found responsible, when applicable, the Respondent may be given a deadline for completing any sanctions. If the Respondent fails to complete sanctions by the assigned deadline, the Respondent will be subject to consequences that may include but are not limited to:

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- 1) Accounts will be held so that the student may not register for classes.
- 2) Students who are in their last year may have their diplomas withheld until all outstanding sanctions have been completed.
- 3) Fines
- 4) Removal from housing
- 5) Suspension, expulsion, removal from a leadership position, demotion, loss of annual pay increase, suspension without pay, suspension with pay, termination, or revocation of tenure
- 6) Other actions

### **L. Informal Resolutions**

After the filing of a formal complaint, parties are never required to agree to an informal resolution process. Moreover, Albright will not explore an informal resolution process in cases involving sexual assault or rape, and it will not be offered to resolve allegations that an employee sexually harassed a student. However, when appropriate, Albright may explore pursuing an informal resolution. Prior to pursuing an informal resolution, both parties must voluntarily agree, in writing, to enter the informal resolution process.

When pursuing an informal resolution, Albright will provide written notice to the parties disclosing:

- The allegations.
- The requirements of the informal resolution process, including any circumstances under which it precludes a party from resuming a formal complaint arising from the same allegations.
- Consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

Prior to agreeing to enter any informal resolution, both parties have the right, at any time, to withdraw from the informal resolution process and resume the formal investigation and adjudication that commences upon filing a complaint.

Finally, those that oversee any informal resolution process will have no conflict of interest or bias for or against Complainants or Respondents generally, as well no conflict of interest or bias for or against any individual Complainant or Respondent.

### **M. Sanctions**

There may be one or more sanctions imposed if the Respondent is found responsible. A Respondent subject to sanctions that requires travel to a location off campus must pay for

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their own travel expenses or any other additional expenses that may occur. Sanctions include but are not limited to:

- Warning – Verbal or Written
- Apology Notification
- No Contact Order
- Probation
- Required Counseling
- Required Training or Education
- Removal from or Relocation of Housing Assignment
- Suspension
- Expulsion
- Withholding Diploma
- Revocation of Degree
- Organizational Sanctions
- Performance Improvement Plain (PIP)
- Removal from a Leadership Position
- Demotion
- Loss of Annual Pay Increase
- Suspension without Pay
- Suspension with Pay
- Termination
- Revocation of Tenure
- Other actions

### **N. Remedies**

Remedies that may be awarded to a Complainant include but are not limited to:

- Counseling and health services
- Applicable education to the Albright community
- Altering housing situations
- Altering work arrangements
- Providing campus escorts
- Providing applicable accommodations for transportation
- Implementing contact limitations between the parties
- Offering adjustments to academic deadlines, course schedules, etc.
- Other actions

The Title IX Coordinator is responsible for effective implementation of any remedies.

### **O. Emergency Removal and Administrative Leave**

Prior to the conclusion of the grievance process, Albright may remove a Respondent from its education program or activity on an emergency basis. Before such an emergency removal,

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Albright will (i) undertake an individualized safety and risk analysis and (ii) determine that there is an immediate threat to the physical health or safety of a student or other individual arising from the allegations of sexual harassment. The College will also provide the Respondent with notice and an opportunity to challenge the decision immediately following the emergency removal.

Apart from removing a Respondent on an emergency basis, Albright may also place a non-student employee Respondent on administrative leave during the pendency of a grievance process.

### **P. Dismissal or Consolidation of Formal Complaints**

Albright will investigate the allegations in a formal complaint, but, for purposes of Title IX, after its investigation, Albright must dismiss formal complaints in the following circumstances:

- When the conduct alleged in the formal complainant would not constitute sexual harassment even if proved.
- When the conduct alleged, even if proved, did not occur in Albright's education program or activity.
- When the conduct alleged, even if proved, did not occur against a person in the United States.

For purposes of Title IX, at any time during an investigation or hearing, Albright may dismiss formal complaints in the following circumstances:

- When a Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations in it.
- When the Respondent is no longer enrolled or employed by Albright.
- When specific circumstances prevent Albright from gathering evidence sufficient to reach a determination as to the formal complaint or its allegations.

Upon any dismissal required or permitted for the purpose of Title IX, Albright will send a written notice of the dismissal, along with the reasons for it, simultaneously to both parties.

For purposes of Title IX, when the allegations of sexual harassment arise out of the same facts or circumstances, Albright may consolidate formal complaints:

- That involve allegations of sexual harassment against more than one Respondent.
- That involve allegations of sexual harassment by more than one Complainant against one or more Respondents.

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- That involves allegations of sexual harassment by one party against the other party.

### **Q. Appeals**

Both a Complainant and a Respondent may appeal a hearing decision. Likewise, parties have a right to appeal decisions Albright makes to dismiss a formal complaint. Parties must file any appeal in writing within seven business days of receiving a decision. The submission of an appeal stays any sanctions for the pendency of an appeal.

The basis of appeal must meet one of the following criteria: (i) a procedural irregularity that affected the outcome of the matter; (ii) new evidence becomes available that was not reasonably available at the time the determination or dismissal was made that could affect the outcome of the matter; or (iii) the Title IX Coordinator/Compliance Officer, investigator(s), or decision-makers(s) had a conflict of interest or bias for or against Complainants or Respondents generally or for or against the individual Complainant or Respondent that affected the outcome of the matter.

When one party makes an appeal, the other party will be notified in writing of the appeal filed. Once the other party has been notified, they will have an opportunity to submit a written statement in response within five (5) business days.

The decision-maker(s) for the appeal will not be the same individual(s) that made a determination regarding responsibility or that decided to dismiss a formal complaint. Likewise, the decision-maker(s) for an appeal will not be the same people that were involved with investigating a case or the Title IX Coordinator. Also, the decision-maker(s) for an appeal will not have a conflict of interest or bias for or against Complainants or Respondents generally or for or against the individual Complainant or Respondent.

When it comes to an appeal, the decision-maker(s) will take one or more of the following actions: (a) Uphold the original decision; (b) Refer the matter for further investigation or a new investigation; (c) Send the matter back to the original Board for a new hearing; (d) require a new hearing by a different Board; and/or (e) other appropriate action.

On appeal, a written determination will be made within 15 business days. The calculation of the 15 business days will commence after the expiration of the 5 business day time period by which the non-appealing party has the opportunity to submit a written response. Both parties will be notified simultaneously of the appeal decision in writing.

### **R. Records**

For at least seven years, Albright will maintain records of:

- Any informational meetings recorded as a part of the Title IX grievance process.
- Each sexual harassment investigation and any determination regarding responsibility.
- The recording or transcript of any Board hearing.

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- Sanctions imposed on any Respondent.
- Remedies provided to any Complainant.
- Any appeal regarding a determination of responsibility, as well as the results of the appeal.
- Any informal resolution, as well as the results of any informal resolution.
- All materials used to train Title IX Coordinators, Investigators, decision-makers, and any person who facilitates an informal resolution process.
- A record of any actions, including supportive measures taken, in response to a report or formal complaint of sexual harassment.

### **S. Delays for Good Cause**

Throughout the grievance/hearing process, Albright has the right to institute temporary delays for good cause. Good cause may include, but is not limited to, considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity, or the need for language assistance or accommodation of disabilities. Upon instituting any delay in the grievance/hearing process, the Title IX Coordinator will provide the Complainant and the Respondent with written notice of the delay and the reasons for it.

### **T. Retaliation**

Albright prohibits any retaliation against any individual for the purpose of interfering with any right or privilege secured by Title IX or because an individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing. Retaliation includes, but is not limited to, intimidation, threats, coercion, punishment, or discrimination. Intimidation, threats, coercion, or discrimination (including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination or sexual harassment) for the purpose of interfering with any right or privilege secured by Title IX or this part, constitutes retaliation. Any complaints involving retaliation for matters involving sexual harassment may be submitted to the Title IX Coordinator and will be adjudicated using the procedures set forth in this Title IX Sexual Harassment Policy.

### **U. Affirmative Consent Policy:**

Consent to engage in sexual activity involves a knowing, free, and ongoing decision on the part of an individual to engage in that activity. Consent is demonstrated through mutually understandable words and/or actions that clearly indicate a willingness to engage freely in sexual activity. Consent is assessed based upon the totality of the circumstances (including relevant previous patterns that may have been evidenced) and by considering whether a

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reasonable, sober person in the same circumstances knew or should have known that the other party could or could not and/or did or did not consent to the sexual activity.<sup>1</sup>

Important points regarding consent include:

- Prior to initiating any sexual activity, the person(s) initiating the sexual activity is expected to obtain consent.
- Consent must exist from the beginning to end of each instance of sexual activity and for each form of sexual contact.
- Silence, passivity, lack of resistance, or a lack of verbally refusing sexual activity does not, by itself, necessarily indicate consent.
- If at any time during sexual activity, any confusion or ambiguity arises, individuals should pause and seek clarification regarding consent.
- Consent to one form of sexual activity (such as kissing) does not necessarily constitute consent to engage in other forms of sexual activity (such as intercourse).
- Consent to previous sexual activity, even in the context of an intimate relationship, does not necessarily presume consent is given to further sexual activity in any subsequent sexual encounter. For example, just because, on one occasion in the past, an individual consented to sexual intercourse, it does not necessarily follow that this one instance of past consent necessarily implies consent to a future instance of sexual intercourse on a different occasion.
- Consent is not effective if it results from the use or threat of physical force, intimidation, or coercion (i.e. words or actions involving threats or implied threats), or any other factor that would eliminate an individual's ability to exercise their own free will.
- Significant age or perceived power differentials can impact an individual's capacity to provide consent.
- Consent cannot be obtained from an individual who is incapacitated. Further, consent is automatically withdrawn when a party reaches a state of incapacitation wherein that individual is no longer capable of continuing to consent to any sexual activity. Incapacitation is a state wherein an individual cannot make a knowing, free, and deliberate choice to engage in or continue engaging in sexual

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<sup>1</sup> Under the law, any kind of reasonable person standard, such as the one included here, is an objective standard that all individuals are held to regardless of their personal subjective state. Accordingly, under this policy, all individuals will be held to the objective standard of assessing an individual's consent from the point of view of a reasonable, sober person regardless of that individual's personal subjective state.

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activity. Incapacitation is assessed based upon the totality of the circumstances and by considering whether a reasonable, sober person initiating sexual activity would have known or reasonably should have known that the individual was incapacitated or reached a state of incapacitation. Individuals who are asleep, unresponsive or unconscious are incapacitated. An individual who is under the influence of alcohol and/or other drugs may be incapacitated. Other indicators that an individual may be incapacitated include, but are not limited to, the inability to communicate coherently, inability to dress/undress without assistance, inability to walk without assistance, slurred speech, loss of coordination, vomiting, or inability to perform other physical or cognitive tasks without assistance. An individual may also be incapacitated due to a temporary or permanent disability or physical or mental health condition (including, but not limited to, mental health issues involving anxiety or depression), as well as due to the failure to take any medications associated with any sort of disability or physical or mental health condition.

- Either party may withdraw consent at any time. Once withdrawal of consent has been expressed, sexual activity must cease immediately.
- Consent cannot be provided where the person has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of providing resistance.

### **V. Definitions**

**Business Day:** A business day includes all days the College is in session as well as regular workdays even if the College is not in session.

**Consent:** Review Albright's Affirmative Consent Policy contained in Section U.

**Employee:** An employee includes anyone employed in any capacity at the College, including, but not limited to, any full-time or part-time or adjunct College faculty.

**Hearings:** College hearings are not criminal or civil proceedings. They are processes administered by the College to find whether a student violated a College policy.

**Preponderance of the Evidence:** Standard of proof used to determine responsibility for charges of sexual harassment. The standard asks is it more likely than not, based on the evidence and documentation presented, that the policy violation occurred.

**Student:** All persons taking courses at Albright College, both full-time and part-time, degree-seeking or non-degree-seeking.