DRAFT INTERIM Title IX Policy

1. Purpose

The Purpose of this policy is to establish clearly and unequivocally that The Citadel prohibits sexual harassment and retaliation by individuals subject to its control or supervision and to set forth grievance procedures by which such allegations shall be filed, investigated, and adjudicated. The goal of this policy is to prevent sexual harassment and effectively remedy the discriminatory effect of such misconduct when it occurs.

2. Reference

A. Office for Civil Rights, U.S. Department of Education; Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance

B. Equal Employment Opportunity Commission (EEOC) Guidelines on Sexual Harassment in the Workplace

C. Title VII of the Civil Rights Act of 1964

D. Title IX of the Education Amendments of 1972, 20 USC § 1681, et. seq.


F. Family Educational Rights and Privacy Act, 20 USC § 1232g


H. Violence Against Women Reauthorization Act (VAWA) of 2013, 42 USC §13701

3. Policy

The Citadel, The Military College of South Carolina (“The Citadel”) is committed to creating an educational and employment environment free of harassment and discrimination. The Citadel prohibits any form of discrimination and harassment on the basis of sex, race, color, age, religion, national or ethnic origin, sexual orientation, gender identity or expression, pregnancy, marital or family status, medical condition, genetic information, veteran status, or disability in any decision regarding admissions, employment, or participation in a Citadel program or activity, in accordance with federal, state, and local non-discrimination and equal opportunity laws, such as Titles VI and VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, The Age Discrimination in Employment Act, The Americans with Disabilities Act and ADA Amendments Act, and The Equal Pay Act.
The Citadel also complies with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crimes Statistics Act, as amended by the Violence Against Women Act (VAWA). Title IX prohibits retaliation for reporting or otherwise participating in claims of sex discrimination/misconduct. VAWA imposes additional duties on universities and colleges to investigate and respond to reports of sexual assault, stalking, and interpersonal violence, and to publish policies and procedures related to the way these reports are handled. The Citadel has designated the Title IX Coordinator, with assistance from the Deputy Title IX Coordinators, to coordinate The Citadel’s compliance with the Clery Reporting related to VAWA requirements.

The Citadel does not discriminate on the basis of sex in its education programs or activities, and is required by Title IX of the Education Amendments of 1972, and the Final Title IX Rule issued by the U.S. Department of Education in May 20201 (Final Rule), not to discriminate in such a manner. The requirement not to discriminate on the basis of sex in the education program or activity extends to admission and employment. Inquiries about the application of Title IX and its implementing regulations may be referred to the Title IX Coordinator, to the Assistant Secretary for Civil Rights, or both.

Questions related to this policy can be directed to the following individual:

Valerie Mercado  
Title IX Coordinator/ Compliance Officer  
171 Moultrie Street  
Bond Hall, Rm 192  
Charleston, SC 29409  
vmercado@citadel.edu  
(843) 953-6881 (office)  
(724) 433-0462 (cell)

Inquiries may be made externally to:

Office for Civil Rights (OCR)  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 20202-1100  
Customer Service Hotline #: (800) 421-3481  
Facsimile: (202) 453-6012  
TDD#: (877) 521-2172  
Email: OCR@ed.gov  
Web: http://www.ed.gov/ocr

For inquiries involving employees: Equal Employment Opportunity Commission (EEOC)

Non-Discrimination in Application

1 The full text of the Final Rule and its extensive Preamble are available here: http://bit.ly/TitleIXReg
The requirements and protections of this policy apply equally regardless of sex, sexual orientation, gender identity, gender expression, or other protected classes covered by federal or state law. All requirements and protections are equitably provided to individuals regardless of such status 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 Department of Education’s Office for Civil Rights using contact information available at https://ocrcas.ed.gov/contact-ocr.

4. Definitions

**Sexual Misconduct Definitions**

a. **Sexual Harassment** – conduct on the basis of sex that satisfies one or more of the following:

   (1) an employee of The Citadel conditioning the provision of an aid, benefit, or service of the recipient on an individual’s participation in unwelcome sexual conduct
   (2) unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient’s education program or activity
   (3) sexual assault, dating violence, domestic violence, or stalking, as defined below

For purposes of this policy, the term also includes Quid Pro Quo Harassment and Hostile Environment Harassment as defined below.

   (a) **Dating Violence** – includes 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; (iii) The frequency of interaction between the persons involved in the relationship. (as defined in the Violence).

   (b) **Domestic violence** - includes any 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 South Carolina domestic or family violence laws 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 South Carolina.

   (c) **Sexual assault** – includes any sexual act directed against another person, without the Consent of the victim including instances where the victim is incapable of giving Consent. Sexual Assault may be one of the following categories:
1. **Sexual Penetration Without Consent** – Any penetration of the mouth, sex organs, or anus of another person, however slight by an object or any part of the body, when Consent is not present. This includes performing oral sex on another person when Consent is not present.

2. **Sexual Contact Without Consent** – Knowingly touching or fondling a person’s genitals, breasts, buttocks, or anus, or knowingly touching a person with one’s own genitals, breasts or buttocks when Consent is not present. This includes contact done directly or indirectly through clothing, bodily fluids, or with an object. It also includes causing or inducing a person, when Consent is not present, to similarly touch or fondle oneself or someone else.

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

A course of conduct is when a person engages in two or more acts that include, but are not limited to, acts in which the person directly, indirectly, or through third-parties, by any action, method, device, or means, follows, monitors, observes, surveys, threatens, or communicates to or about a person in a prohibited way, or interferes with a person’s property.

Stalking includes the concept of cyberstalking, in which electronic media such as the Internet, social networks, blogs, cell phones, texts, or other similar devices or forms of contact are used to pursue, harass, or to make unwelcome contact with another person in an unsolicited fashion.

(e) **Quid Pro Quo Sexual Harassment** – An employee conditioning benefits on participation in unwelcome sexual conduct.

(f) **Hostile Environment Harassment** – Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the educational institution’s education program or activity.

b. **Retaliation** – Any action, directly or through others, which is aimed to deter a reasonable person from reporting sexual misconduct or participating in an investigation or hearing or action that is done in response to such activities. This includes but is not limited to intimidation, threats, coercion, or discrimination against any individual (i) for the purpose of interfering with any right or privilege secured by Title IX of the Education Amendments of 1972 or its implementing regulations; or (ii) 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 this Policy. A finding of retaliation under this policy is not dependent on a finding that the underlying sexual misconduct occurred.
*Note that conduct that does not meet one or more of these criteria may still be prohibited under The Citadel College Regulations which can be viewed at http://www.citadel.edu/root/images/policies/college-regulations.pdf.

**Other Definitions**

c. **Consent**

The Citadel recognizes the standard of Affirmative Consent. Affirmative consent is:

- knowing, and
- voluntary, and
- clear permission
- by word or action
- to engage in any sexual activity

Consent must be given from the beginning to end of each sexual activity and each type of sexual contact. A person’s silence or lack of resistance, in and of itself, does not establish consent. The definition of consent is consistent notwithstanding participants’ sex, sexual orientation, gender identity, or gender expression.

A person who is incapacitated lacks the ability to make informed judgements and cannot consent to sexual contact. Incapacitation is the inability, temporarily or permanently, to give consent because an individual is mentally and/or physically helpless, asleep, unconscious, or unaware that sexual activity is occurring. Mentally helpless means a person is rendered temporarily incapable of appraising or controlling one’s own conduct. Physically helpless means a person is physically unable to verbally or otherwise communicate consent or unwillingness to an act.

When alcohol is involved, incapacitation is a state beyond drunkenness or intoxication. When drug use is involved, incapacitation is a state beyond being under the influence of or impaired by the use of the drug. Alcohol and other drugs impact each individual differently. Determining whether an individual is incapacitated requires an individualized determination.

When determining whether a person has the capacity to provide Consent, the College will consider whether a sober, reasonable person in the same position knew or should have known that the other party could or could not consent to the sexual activity. When determining whether Consent has been provided, all the circumstances of the relationship between the parties will be considered.

d. **Education Program or Activity**

For purposes of this policy, the term “education program or activity” includes:

- Any on-campus premises
- Any off-campus premises that The Citadel has substantial control over. This includes buildings or property owned or controlled by a recognized Citadel-sponsored organization.
• Activity occurring within computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of The Citadel’s programs and activities over which the The Citadel has substantial control.

e. Formal Complaint

A document – including an electronic submission - filed by a Complainant with a signature or other indication that the Complainant is the person filing the Formal Complaint, or signed by the Title IX Coordinator, alleging Title IX Sexual Harassment against a respondent about conduct within The Citadel’s education program or activity and requesting initiation of the procedures consistent with the Title IX Grievance Process to investigate the allegation of Title IX Sexual Harassment. **The Citadel will only initiate an Investigation under this policy when a Complainant or the Title IX Coordinator files a Formal Complaint as defined in this Paragraph 4.e.**

f. Complainant

An individual who is alleged to be the victim of conduct that could constitute sexual harassment.

g. Report

Notification of a conduct that could constitute sexual harassment to an employee of The Citadel, including but not limited to a Confidential Resource or Official with Authority (OWA). Any individual, including but not limited to a Complainant, may make a report of sexual misconduct. A report may be accompanied by a request for (1) supportive or interim measures; (2) no further action; and/or (3) filing a Formal Complaint. **Making a “report” of misconduct is different from filing a Formal Complaint.** When an individual makes a Report of sexual misconduct to anyone other than an Official With Authority, The Citadel is not required to initiate an “Investigation,” as prescribed in Section 11 herein, and The Citadel will not initiate such an Investigation solely as a result of a “Report.” **The Citadel will only initiate an investigation under this policy when a Complainant or the Title IX Coordinator files a Formal Complaint as defined in Paragraph 4.e, above.**

h. Reporter

An individual who makes a Report of conduct that could constitute sexual harassment. A Reporter may be, but is not necessarily, a Complainant.

i. Relevant Evidence and Questions

(1) Evidence is relevant if (1) it has any tendency to make a fact more or less probably than it would be without the evidence and (2) the fact is of consequence in determining whether sexual harassment occurred.

(2) A question is relevant if it will elicit relevant evidence, as described in 4.g.(1), above
“Relevant” evidence and questions do not include the following types of evidence and questions, which are deemed “irrelevant” at all stages of the Title IX Grievance Process:

- Evidence and questions about the complainant’s sexual predisposition or prior sexual behavior unless:
  - They are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or
  - They concern specific incidents of the complainant’s prior sexual behavior with respect to the respondent and are offered to prove consent.
- Evidence and questions that constitute, or seek disclosure of, information protected under a legally-recognized privilege, including the attorney-client privilege, the physician-patient privilege, and the spousal privilege.
- Any party’s medical, psychological, and similar records unless the party has given voluntary, written consent.

j. Disability Accommodations

This Policy does not alter any institutional obligations under federal disability laws including the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Parties may request reasonable accommodations for disclosed disabilities to the Title IX Coordinator at any point before or during the Title IX Grievance Process that do not fundamentally alter the Process. For privacy reasons, Title IX Officials may not know if a Party is receiving accommodations in other institutional programs or activities. Therefore, a Party who wishes to request reasonable accommodations in the Title IX Process must make a request to the Title IX Coordinator.

k. Advisor

A person chosen by a party or appointed by the institution to accompany the party to meetings related to the Title IX Grievance Process, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if any. For information on the role of the advisor, including The Citadel’s requirements for and restrictions on advisors, see Section 11.

l. Witness

An individual who has information directly related to the allegation.

m. Official With Authority (OWA)

An employee of The Citadel who has the responsibility to implement corrective measures for harassment, discrimination, and/or retaliation on behalf of the college. **The Citadel will only undertake a response to a report of sexual misconduct when made to an Official With Authority.** The Citadel’s response to a report of sexual misconduct **may, but will not necessarily**, result in an investigation as prescribed in Section 12 of this Policy. The Citadel has designated certain officials as having the responsibility to
implement corrective measures for harassment, discrimination, and/or retaliation on behalf of the college. See Annex.

n. Confidential Resource

An employee of The Citadel who is not an OWA and who is not obligated to report Sexual Misconduct to any other official of The Citadel, including the Title IX Coordinator, or to any law enforcement officer. Confidential Resources are a key element to The Citadel campus community and can advise on support and resource options, as well as provide the student or employee information on reporting options and processes. However, The Citadel will not initiate an investigation of or otherwise undertake any response to a report of sexual misconduct made solely to a Confidential Resource. The Citadel has designated certain individuals as “Confidential Resources.” See Annex and the Title IX Website.

o. Informal Resolution

As an alternative to the formal grievance procedure, The Citadel may offer parties the option of participating in an informal resolution process. If both parties voluntarily consent, the institution can resolve the complaint without engaging in the formal grievance procedure.

5. Statement on Privacy and Confidentiality

The Citadel is committed to protecting the privacy of all individuals involved in a report of sexual harassment. Every effort will be made to protect the privacy interests of all individuals involved. “Privacy” and “confidentiality” have distinct meanings under this policy.

“Privacy” generally means that information related to a report of sexual misconduct will only be shared with a limited circle of individuals, including individuals who “need to know” in order to assist in the review, investigation, or resolution of the report or to deliver resources or support services. While not cloaked with “confidentiality” or privilege, these individuals will be discreet and respect the privacy of all individuals involved in the process. All participants in an investigation of sexual misconduct, including advisors and witnesses, will be informed that privacy helps enhance the integrity of the investigation and protect the privacy interests of the parties and will be asked to keep any information learned in an investigation meeting or hearing confidential, to the extent consistent with applicable law.

The Citadel has designated certain individuals as having “confidentiality.” For reports made to employees designated as having confidentiality, The Citadel will respect the reporting party’s expectations of privacy to the extent possible under law, while still complying with other reporting obligations. For example, complaints involving minors cannot be kept confidential because such reports are subject to mandatory reporting requirements.

Individuals designated as having confidentiality will report the nature, date, time and general location of an incident to the Title IX Coordinator. Confidential resources will not share other information with the Title IX Coordinator or any other employee of The Citadel without the
express permission of the disclosing party. Confidential resources can provide information about The Citadel on and off-campus resources, support services, and other options. As noted above, because of the confidential nature of these resources, disclosing information to or seeking advice from a confidential resource does not constitute a Report or Complaint to The Citadel and will not result in a response or investigation by The Citadel. A person consulting with a confidential resource may later decide to make a report to The Citadel and or law enforcement.

The Citadel will generally respect a complainant’s choice whether to report an incident to local law enforcement or initiate The Citadel’s Title IX Grievance Process, unless The Citadel determines that there is an overriding interest with respect to the safety or welfare of The Citadel community. Where a report involves suspected abuse of a child (an individual under the age of 18 at the time of the incident(s) as reported), all Citadel employees are required to notify Citadel Department of Public Safety, 811 on campus or 843-953-5114 . All other members of the community are strongly encouraged to report suspected child abuse to law enforcement or the South Carolina Abuse and Neglect Reporting Hotline: 1-888-CARE4US (1-888-227-3487).

In order to protect the health and safety of the campus community, The Citadel may issue a Timely Warning of conduct that discloses a potential immediate threat to the campus.

The following Officials will provide privacy, but not confidentiality, upon receiving a Report of prohibited conduct and may also be contacted to discuss concerns regarding this policy and procedures:

**Title IX Coordinator**

Valerie Mercado  
(724) 433-0462 (cell)

**Deputy Title IX Coordinators**

Shawn Edwards, Chief Diversity Officer  
(843) 953-6989  
shawn.edwards@citadel.edu

Kathy Kroupa, Senior Assoc. Athletic Director  
(843) 953-6604  
kkroupa@citadel.edu

The Citadel Department of Public Safety  
Off Campus: 9-1-1 | On Campus: 8-1-1 (campus phones only)  
Office: 843-953-5114  
psaf@citadel.edu  
208 Richardson Ave.  
Charleston, SC 29403

**Officials With Authority**
Please see the list of Citadel OWAs in Annex A.

**Confidential Resources**

The following College Officials/Offices may provide confidentiality upon receiving a report of sexual harassment and provide supportive measures to the student or employee:

- **Janet Shealy**
  Director of Campus Advocacy, Response, and Education (CARE)
  105 Thompson Hall
  shealyj1@citadel.edu
  (843) 953-7277 (office)
  (843) 425 – 1315 (cell)

- **Colonel Robert Pickering, Jr.**
  Ombudsperson
  137 Thompson Hall
  (843) 953-5096 (office)
  (843) 437-9645 (cell)
  robert.pickering@citadel.edu
  ombud@citadel.edu

- **The Citadel Counseling Center**
  203 Richardson Ave.
  (843) 953-6799

- **Major Shamus Gillen**
  120 Bond Hall, Admissions Office
  (843) 953-4830 (office)
  (843) 743-9847 (cell)
  (843) 478-0239 (personal cell)
  Shamus.gillen@citadel.edu
  ombud@citadel.edu

- **Dr. Grant Goodrich**
  The Krause Center
  201 Richardson Ave.
  (843) 953-4366 (office)
  (843) 641-8305 (cell)
  ggoodrich@citadel.edu
  ombud@citadel.edu

- **Joe Molina**
  The Citadel Chaplain to the Corps of Cadets
  Summerall Chapel
  (843) 953-6841 (office)

6. **Making a “Report”**

Any person may make a Report of sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual 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. However, The Citadel’s receipt of a “Report” does not require The Citadel to initiate an “investigation,” as prescribed herein, and The Citadel will not initiate such an investigation based solely on the receipt of a “Report.” The Citadel will only initiate an investigation under this policy when a
Complainant or the Title IX Coordinator files a Formal Complaint as defined in Paragraph 4.e, above.

A Report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address listed for the Title IX Coordinator. Electronic and anonymous reporting may also be done by using the Fraud, Waste, and Abuse Compliance Hotline found at the bottom of the www.citadel.edu homepage or at https://secure.ethicspoint.com/domain/media/en/gui/38738/index.html.

Contact information for the Title IX Coordinator:

Valerie Mercado
Title IX Coordinator/ Compliance Officer
171 Moultrie Street
Bond Hall, Rm 192
Charleston, SC 29409
vmercado@citadel.edu
(843) 953-6881 (office)
(724) 433-0462 (cell)

Off-campus resources for filing complaints and requesting support include:

- South Carolina Law Enforcement Division (SLED), (803) 737-9000 (24/7); or the Ninth Circuit Solicitor.
- People Against Rape, a local, non-profit community agency specializing in assisting victims of sexual assault, (843) 745-0144 (24/7);
- Medical University of South Carolina Emergency Room (MUSC), (843) 792-9127. MUSC provides triage, medical treatment, and, within 120 hours of the assault, a free Sexual Assault Forensic Exam (SAFE). Recipients of the exam do not have to file criminal charges.
- Rape, Abuse & Incest National Network - RAINN: https://www.rainn.org/get-help

7. Initial Assessment

A. Response to Report of Sexual Misconduct

Anyone may make a report of Sexual Misconduct to the Title IX Coordinator. Upon receipt of a Report of Sexual Misconduct, the Title IX Coordinator will conduct an Initial Assessment of the reported information and respond to any immediate health or safety...
concerns raised by the report. The Title IX Coordinator will also promptly contact the Complainant to:

- discuss the availability of supportive measures with or without the filing of a Formal Complaint;
- explain the process for filing a Formal Complaint; and
- ascertain and consider the complainant’s wishes with respect to supportive measures.

A complainant may request supportive measures only, may file a Formal Complaint, or may request more time to consider their options. Alternatively, as described below, the Title IX Coordinator may determine that it is appropriate to file a Formal Complaint on behalf of a Complainant. A Complainant is always entitled to reasonably available supportive measures, regardless of whether the Grievance Process or Informal Resolution is initiated.

As part of the Initial Assessment, the Title IX Coordinator will determine, in consultation with other need to know college officials as appropriate, whether the Policy applies to the report and whether the reported conduct falls within the jurisdiction and scope of the Policy.

B. Intake Meeting

The Initial Assessment typically includes an initial intake meeting (which may take place in person or via live technology), with the Complainant to understand the nature and circumstances of the report and to provide the Complainant with information about resources, including local law enforcement resources as applicable, procedural options, supportive measures, and an opportunity to discuss the Policy.

In addition to the intake meeting, the Title IX Coordinator will provide the Complainant with written information about resources, procedural options for resolving formal complaints, reasonably available supportive measures and the process for requesting and obtaining them, the range of disciplinary sanctions available upon a finding of responsibility for violating the Policy, the prohibition against retaliation, and how to report concerns of retaliation. The written information will also include information about campus and community resources and services, including counseling, health, mental health, victim advocacy, legal assistance, and other available services. This written information will also include a notification about the process for seeking disability-based accommodations, academic adjustments, and/or auxiliary aids under section 504 of the Rehabilitation Act/or the Americans with Disabilities Act.

C. Overview of Initial Assessment

As part of the Initial Assessment, the Title IX Coordinator will typically:

- promptly contact the complainant to discuss the availability of supportive measures;
- consider the complainant’s wishes with respect to supportive measures;
- assess the nature and circumstances of the report based on reasonably available information;
- discuss the complainant’s expressed preference for manner of resolution and any barriers to proceeding;
• assess the nature and circumstances of the report, including whether it provides the names and/or any information that identifies the complainant, the respondent, any witness and/or any other individual with knowledge of the reported incident;

• address immediate physical safety and emotional well-being;

• notify the complainant of their right to contact (or decline to contact) law enforcement or seek a civil protection order;

• notify the complainant of the right to seek medical treatment;

• notify the complainant of the importance of preservation of evidence;

• conduct an individualized analysis of safety and risk for the campus community to determine whether a student respondent’s presence in the program or activity poses an immediate threat to the physical health or safety of any student, faculty, staff, or other individual such that it justifies emergency removal;

• conduct an individualized analysis of safety and risk for the campus community to determine the need for administrative leave for an employee respondent;

• refer the report to the Public Safety Department as to reporting under the Clery Act;

• with the Public Safety Department, assess the need for a timely warning under the Clery Act;

• provide the complainant with written information about on and off campus resources;

• notify the complainant about their option to report to law enforcement;

• provide the complainant with an explanation of the procedural options (e.g., the Grievance Process or Informal Resolution);

• notify the complainant of the right to be accompanied at any meeting by an Advisor of choice, that the Advisor may accompany them to any meeting or proceeding under the policy and complainant, and that if the matter proceeds to the Grievance Process and either party does not have an Advisor, the college will provide an Advisor for that party to conduct cross-examination, without fee or charge, to conduct questioning on behalf of the party at the adjudication meeting;

• assess the available information for any pattern of conduct by respondent;

• discuss the complainant’s expressed preference for manner of resolution and any barriers to the proceeding (e.g., confidentiality concerns);

• explain the college’s policy prohibiting retaliation and how to report acts of retaliation; and

• determine the age of the complainant; and if the complainant is a minor, make the appropriate report of suspected abuse consistent with S.C. law.

D. Supportive Measures

The Citadel will offer and implement appropriate and reasonable supportive measures to the parties upon a report of sexual harassment.

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the parties to restore or preserve access to The Citadel’s education program or activity, including measures designed to
protect the safety of all parties, The Citadel’s educational environment, and/or deter harassment, discrimination, and/or retaliation.

The Citadel will maintain the privacy of the supportive measures, provided that privacy does not impair The Citadel’s ability to provide the supportive measures.

Supportive measures may include, but are not limited to:

- Referral to counseling, medical, and/or other healthcare services
- Referral to the Employee Assistance Program
- Extensions of deadlines or other course-related adjustments
- Modifications of work or class schedules
- Campus escort services
- Restrictions on contact between the parties (no contact orders)
- Changes in work or housing locations
- Leaves of absence
- Increased security and monitoring of certain areas of the campus

Violations of No Contact Orders will be referred to the appropriate student or employee conduct processes for enforcement.

E. Emergency Removal

The Citadel retains the authority to remove a student respondent from The Citadel’s program or activity on an emergency basis, where The Citadel (1) undertakes an individualized safety and risk analysis and (2) determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Sexual Misconduct justifies a removal. In determining whether to remove a student respondent pursuant to this Section 7.E, The Citadel will utilize the procedures prescribed in Memorandum 2-9 Temporary Suspension of Students.

F. Administrative Leave

The Citadel retains the authority to place a non-student employee respondent on administrative leave during the Title IX Grievance Process, consistent with Memorandum 2-109 Progressive Discipline Policy.

8. Filing a Formal Complaint

At any time following an incident that could constitute sexual harassment, a Complainant or the Title IX Coordinator may file a Formal Complaint. Filing of a Formal Complaint initiates the Title IX Grievance Process, which includes an Investigation and concludes with a Hearing.

To file a Formal Complaint, a Complainant must provide the Title IX Coordinator a written, signed complaint describing the facts alleged. Complainants are only able to file a Formal Complaint under this Policy if they are currently participating in, or attempting to participate in, the education programs or activities of The Citadel, including as an employee.
If the Complainant elects not to file a Formal Complaint, the Title IX Coordinator may still determine a Formal Complaint is necessary. The Title IX Coordinator will consider the following factors:

- The totality of the known circumstances;
- The nature and scope of the alleged conduct, including whether the reported behavior involves the use of a weapon;
- The respective ages and roles of the complainant and respondent;
- The risk posed to any individual or to the campus community by not proceeding, including the risk of additional violence;
- Whether there have been other reports of other Sexual Misconduct by the respondent;
- The complainant’s interest in the college not pursuing an investigation or disciplinary action and the impact of such actions on the complainant;
- Whether the college possesses other means to obtain relevant evidence;
- Fairness considerations for both the complainant and the respondent;
- The Citadel’s obligation to provide a safe and non-discriminatory environment; and
- Any other available and relevant information.

The Citadel will inform the Complainant of the Title IX Coordinator’s decision to file a Formal Complaint in writing. The Complainant need not participate in the process further but will receive all notices issued under this Memorandum.

A complainant who files a Formal Complaint may elect, at any time, to address the matter through The Citadel’s Informal Resolution Process. Information about this process is available here.

The Citadel will complete the Grievance Process in a reasonably prompt manner after the filing of the Formal Complaint, though The Citadel may extend the Process for sufficient reason, including but not limited to 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. The procedure for applying for extensions is described below.

At any time during the Title IX Grievance Policy, and regardless of any actions taken by The Citadel, any other entity, or any person, a Complainant may seek the assistance of law enforcement, including but not limited to the filing of a criminal complaint. The Citadel will provide the Complainant assistance in seeking such assistance.

8) Consolidation of Formal Complaints

The Title IX Coordinator may consolidate Formal Complaints 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 Sexual Misconduct arise out of the same or substantially similar facts or circumstances. All parties will receive simultaneous, timely notification of any such consolidation. During the course of the investigation, the investigation may reveal the existence of additional or different potential policy violations, which may also be consolidated following notification to the parties of the amended notice of investigation.
9) **Determining Title IX Grievance Process Jurisdiction**

a. **Required Elements**

The Title IX Coordinator will determine if the Title IX Grievance Process should apply to a Formal Complaint. The Process will apply when all of the following elements are met, in the reasonable determination of the Title IX Coordinator:

I. The conduct is alleged to have occurred in the United States;
II. The conduct is alleged to have occurred in a Citadel education program or activity and/or the respondent attends The Citadel; and
III. The alleged conduct, if true, would constitute sexual misconduct as defined in this policy.

If all of the elements are met, The Citadel will investigate the allegations according to the Title IX Grievance Process.

b. **Mandatory Dismissal**

If any of the conditions in Section 9.a are not met, the Title IX Coordinator will notify the parties that the Formal Complaint is being dismissed for the purposes of the Title IX Grievance Process. Each party may appeal this dismissal using the procedure outlined in “Appeals,” below.

c. **Discretionary Dismissal**

The Title IX Coordinator may dismiss a Formal Complaint brought under the Title IX Grievance Policy, or any specific allegations raised within the Formal Complaint, at any time during the investigation or hearing if:

- A complainant notifies the Title IX Coordinator in writing that they would like to withdraw the Formal Complaint or any allegations raised in the Formal Complaint;
- The respondent is no longer enrolled or employed by The Citadel; or,
- If specific circumstances prevent The Citadel from gathering evidence sufficient to reach a determination regarding the Formal Complaint or allegations within the Formal Complaint.

Any party may appeal a dismissal determination using the process set forth in “Appeals,” below.

d. **Notice of Dismissal**

Upon reaching a decision that the Formal Complaint will be dismissed, The Citadel will promptly send written notice of the dismissal of the Formal Complaint, or any specific allegation within the Formal Complaint, and the reason for the dismissal, simultaneously to the parties through their institutional email accounts. It is the responsibility of parties to maintain and regularly check their email accounts.

e. **Initiation of Disciplinary Proceedings**
Dismissal of the Formal Complaint for purposes of the Title IX Grievance Process does not preclude initiation of disciplinary proceedings under other applicable rules of The Citadel, including but not limited to the Blue Book, the Citadel Graduate College Code of Conduct, or Human Resources disciplinary procedures. Upon dismissal of the Title IX Grievance Process, the Title IX Coordinator will promptly send written notice to the appropriate disciplinary authority for initiation of such procedures.

10) Notice of Allegations

The Title IX Coordinator will, as soon as practicable, provide both parties with a Notice of Allegations of conduct that potentially constitute sexual harassment.

The Citadel will provide this notice through the institutional email accounts for students and employees and by similar means for all other parties.

The Citadel will provide sufficient time for the parties to review the Notice of Allegations and prepare a response before any initial interview. A sample Notice of Allegations is at Appendix B.

Additional Notice

If, in the course of an Investigation, The Citadel elects to expand the scope of investigation into additional allegations of conduct that may constitute sexual harassment, The Citadel will notify known parties by institutional email accounts, for students and employees, or by similar means for all other parties.

The parties will be provided sufficient time to review the additional allegations to prepare a response before any initial interview takes place regarding those additional charges.

11) Advisors and Representatives

Each party may have an Advisor present during any meeting, interview, and hearings. A party may select any individual to serve as an Advisor, including but not limited to another cadet, student, a friend, mentor, family member, or attorney. Cadets and students may also, or alternatively, be accompanied by a Representative, who must be a cadet or student from the same program as the Party.

a. Advisors:

Role of the Advisor

An Advisor may accompany a Party to any meeting, interview or hearing to which the Party is required or eligible to attend. However, except as explicitly provided by this Policy, an Advisor shall not participate directly in such meeting, interview or hearing.

a) Hearings: An Advisor may only conduct live questioning of the other party and participating witnesses. The Parties shall not directly question each other or any witnesses. As described above, if a party does not retain an Advisor, or a Representative, as appropriate, prior to a hearing, The Citadel will appoint an Advisor for the limited purpose of conducting live questioning of the other party.
and witnesses. Additionally, if a party and the Advisor do not appear at the hearing, The Citadel will appoint an Advisor for the limited purpose of conducting live questioning of the other party, on behalf of the non-appearing party.

b) **Meetings and Interviews:** The parties may be accompanied by their Advisor in all meetings and interviews at which the Party is entitled to be present, including intake and interviews. An advisor may provide confidential advice to the Party or his or her Representative, but shall not address the investigators, witnesses, or other parties.

c) **Pre-Interview Meetings:** An Advisor may request to meet with the administrative officials conducting interviews/meetings in advance of these interviews or meetings. The Citadel will not require administrative officials to conduct such meetings. This pre-Interview meeting allows Advisors to clarify and understand their role and The Citadel’s policies and procedures.

Except as provided above, Advisors are limited to advising their advisees without disrupting proceedings. Advisors shall not address Citadel officials in meetings, interviews, or hearings unless expressly authorized to do so by the investigating officer(s) or presiding official. Advisors may not make presentations or speak on behalf of their advisee to the Investigator(s) or other Decision-maker(s) during any meeting or proceeding.

**Assistance with Finding an Advisor**

The Citadel will assist each party in identifying an Advisor, but except as described above, will not be responsible for retention or compensation thereof. If a party is unable to secure the assistance of an Advisor, The Citadel will provide an Advisor for the sole purpose of conducting questioning of the adverse party at the Hearing. However, The Citadel is not required to, and specifically does not represent that it will, provide an Advisor of equal or greater qualifications or skill as compared to any Advisor or Advisors assisting any other Party. A party who requires a Citadel-provided Advisor must make the request for such Advisor directly to the Title IX Coordinator, via email, no later than three (3) days prior to the Hearing.

For assistance identifying an Advisor, Respondents may wish to contact organizations such as:
- FACE ([http://www.facecampusequality.org](http://www.facecampusequality.org))
- SAVE ([http://www.saveservices.org](http://www.saveservices.org))

For assistance identifying an Advisor, Complainants may wish to contact organizations such as:
- The Victim Rights Law Center ([http://www.victimrights.org](http://www.victimrights.org)),

**b. Representatives**

Cadets and students may also be assisted by up to two Representatives, but the total number of Advisors and Representatives assisting a cadet or student may not exceed two (2).
Representatives must be students in the same academic program as the student facing disciplinary action, i.e., graduate students may not serve as representatives for cadets, nor may cadets serve as representatives for graduate students.

A Representative may accompany a Party to any meeting, interview or hearing to which the Party is required or eligible to attend. A Representative may not participate in any meeting or interview other than to consult privately with the Party to whom the Representative is providing assistance. A Representative may address the hearing officer directly during a Hearing, however. Further, a Representative may conduct examination of witnesses and adverse parties during a Hearing, in the same manner and with the same privileges and limitations as an Advisor, as described above.

12) Investigation

Notice of Investigation

An investigation will occur within a reasonably prompt timeframe to determine if the alleged conduct occurred, and if so, if it constitutes sexual harassment. The investigation commences with the issuance of a Notice of Investigation to both the respondent and complainant. (See Appendix for a sample Notice of Investigation). The Investigation concludes with a final determination after a Hearing.

Appointment of Investigator

When the decision is made to initiate an investigation, the Title IX Coordinator will designate an Investigator to conduct a prompt, thorough, fair and impartial investigation. The Investigator may be an employee of The Citadel and/or an experienced external investigator. Any Investigator used by The Citadel will have received training on issues related to sexual and gender-based harassment, sexual assault, dating violence, domestic violence and stalking; the scope of The Citadel’s education program and activity (to include employment and other college programs and activities); and on how to conduct an investigation that is fair and impartial. The Investigator will be impartial and free from conflict of interest or actual bias for or against complainants or respondents generally, or individual complainants and respondents.

The Investigator, not the parties, is responsible for gathering relevant evidence. During an investigation, the Investigator will seek to meet separately with the complainant, respondent and relevant witnesses. The complainant and respondent will be asked to identify witnesses and provide other relevant information, such as documents, communications and other evidence, if available. The parties are encouraged to provide all relevant information as promptly as possible to facilitate prompt resolution and are encouraged to preserve relevant evidence. In the event that a party declines to voluntarily provide material information, the ability to conduct a prompt, thorough and equitable investigation may be affected.

The respondent will be presumed not responsible for any alleged policy violation unless and until a determination is made, by a preponderance of the evidence, that the respondent committed sexual harassment.
Witnesses

Witnesses are individuals who may have information relevant to the incident, including individuals who may have observed the acts in question, may be able to provide contextual information, or may have other information related to the incident, the disclosure, the parties or related matters. Witnesses may also be offered to provide subject matter expert information. Where witnesses are interviewed as part of the investigation, the name of the witness and the information gathered in the interviews will be included in the written investigative report, which the parties will have the opportunity to review at the conclusion of the investigation.

Other Forms of Evidence

The Investigator will also gather other relevant information or evidence, including documents, photographs, communications between the parties, medical records (subject to the consent of the applicable person), and other electronic records as appropriate.

The Investigator may also consider information publicly available from online sources that comes to the attention of Investigator. The Citadel does not actively monitor online sources, however, and as with all potentially relevant information, the complainant, respondent or witness should bring online information to the attention of the Investigator if they believe it is relevant.

The Investigator may also consider communications involving or relating to one or both parties that either party brings to the attention of the Investigator or that is provided by the parties in response to a request by the Investigator. The Investigator may also seek review of information available on devices or servers owned or controlled by The Citadel, consistent with The Citadel’s technology policies.

The Investigator may visit relevant sites or locations and record observations through written, photographic or other means. In some cases, the Investigator may consult with relevant experts when deemed appropriate and necessary by The Citadel.

In general, a person’s medical and counseling records are privileged records, not accessible to the Investigator unless the person voluntarily waives the privilege in a written consent. When a party waives privilege and provides information to the Investigator, the relevant information from the records must be shared with the other party.

Inspection and Review of Evidence

Prior to the completion of the investigation, the parties will have an equal opportunity to inspect and review the evidence obtained through the investigation. The purpose of the inspection and review process is to allow each party the equal opportunity to meaningfully respond to the evidence prior to conclusion of the investigation.

Evidence that will be available for inspection and review by the parties and their Advisors and/or Representatives will be any evidence that is directly related to the allegations raised in the Formal Complaint. It will include any:
1. Evidence that is directly related to the allegations, even if that evidence does not end up being relied upon by the institution in making a determination regarding responsibility;
2. Inculpatory and exculpatory evidence (i.e. evidence that tends to prove or disprove the allegations) that is directly related to the allegations, whether obtained from a party or other source.

All parties must submit any evidence they would like the investigator(s) to consider prior to when the parties’ time to inspect and review evidence begins.

The college will send the evidence made available for each party and each party’s advisor, if any, to inspect and review through electronic methods or via hard-copy. The Citadel is not under an obligation to use any specific process or technology to provide the evidence and shall have the sole discretion in terms of determining format and any restrictions or limitations on access. The parties will have ten (10) business days to inspect and review the evidence and submit a written response by email to the investigator. The investigator will consider the parties’ written responses before completing the Investigative Report.

The college will provide the parties up to ten (10) business days to provide a response, after which the investigator(s) will not be required to accept a late submission. Investigator has fifteen (15) business days to generate a report or, alternatively, may provide the parties with written notice extending the investigation and explaining the reason for the extension.

**Inclusion of Evidence Not Directly Related to the Allegations**

Evidence obtained in the investigation that is determined in the reasoned judgment of the investigator not to be directly related to the allegations in the Formal Complaint will be included in the appendices to the investigative report.

**Evidentiary Considerations in the Investigation**

The investigation does not consider questions and evidence about the Complainant’s sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant’s prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant.

The investigation will not consider 1) incidents not directly related to the possible violation, unless they evidence a pattern; and 2) the character of the parties, except on a case by case basis.

**Investigative Report**

The Investigator(s) will create an Investigative Report that fairly summarizes relevant evidence. The Investigative Report is not intended to catalog all evidence obtained by the investigator, but only to provide a fair summary of relevant evidence.

Only relevant evidence, both inculpatory and exculpatory, will be referenced in the Investigative Report.
13) Hearing

The Citadel will not issue a disciplinary sanction arising from an allegation of Title IX Sexual Harassment without holding a live hearing, unless otherwise resolved through an informal resolution process. The live hearing is an opportunity for the parties to address the hearing body in person about issues relevant to the determination of responsibility. It is an opportunity for the parties to call witnesses, including fact, character, and expert witnesses, for the decision-makers’ consideration. The hearing body is comprised of three decision-makers.

The live hearing may be conducted with all parties physically present in the same geographic location. At The Citadel’s discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually. This technology will enable participants simultaneously to see and hear each other. Requests for remote participation must be made in writing, to the Title IX Coordinator or Board President, at least five (5) business days in advance of the hearing. At its discretion, The Citadel may delay a hearing based on technological errors not within a party’s control.

All proceedings will be recorded. The recording will be made available to the parties for inspection and review. Information collected during the Investigation and/or presented at the Hearing is subject to certain privacy and confidentiality laws, rules, and regulations, including but not limited to the Family Educational Rights and Privacy Act. All parties, witnesses, advisors, representatives and other participants are subject to the restrictions and prohibitions of all applicable privacy and confidentiality laws, rules, and regulations. The Citadel will enforce those requirements as it deems fit, and it will discipline individuals under its jurisdiction for violating those provisions.

Notice of Hearing

The Complainant and Respondent will be notified in writing of the date, time, and location of the hearing, the designation of hearing body, how to challenge participation by the hearing body for bias or conflict of interest, the right to have an advisor present at the hearing and conduct questioning on the party’s behalf; that The Citadel will provide an advisor, without fee or charge, to conduct questioning on behalf of the party at the hearing if the party does not have an advisor present for the hearing; how to request that witnesses be present at the hearing; and, information about the hearing format. The hearing will be promptly scheduled upon issuance of the investigative report.

Pre-Hearing Meeting

The Board President may convene a pre-hearing meeting(s) with the parties and/or their Advisors to invite them to submit the questions or topics they (the parties and/or their Advisors) wish to ask during cross-examination or discuss at the hearing, so that the Board President can rule on their relevance ahead of time to avoid any improper evidentiary introduction in the hearing or provide recommendations for more appropriate phrasing. However, this advance review opportunity does not preclude the Advisors, or Representative, as appropriate, from asking a question for the first time at the hearing or from asking for a reconsideration based on any new information or testimony offered at the hearing. The Board President must document
and share with each party the panel’s rationale for any exclusion or inclusion at a pre-hearing meeting.

Participants in the Live Hearing

Except in limited circumstances involving employees, hearings are not public, and the only individuals permitted to participate in the hearing are as follows:

Complainant and Respondent (The Parties)
- The parties cannot waive their right to a live hearing; however, neither party is required to participate in a live hearing.
- The Citadel may still proceed with the live hearing in the absence of a party, and may reach a determination of responsibility in their absence. Statements made by a party or witness who does not participate in the hearing and submit to live questioning by the parties’ advisors will not be considered by the Hearing Board. The Hearing Board may not draw any adverse inference from the decision of a party or witness to not participate in the hearing.
- The Citadel will not threaten, coerce, intimidate or discriminate against the party in any attempt to secure the party’s participation.

The Decision-Maker(s)
- The hearing body will consist of a panel of three (3) decision-makers.
- 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 have 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 or against complainants or respondents generally, or in favor or against the parties to the particular case.
- The hearing body will be trained on content provided to investigators, as well as training on how to serve impartially, issues of relevance, and any technology to be used at the hearing.
- The parties will have an opportunity to raise any objections regarding decision-maker’s actual or perceived conflicts of interest or bias at the commencement of the live hearing.

Witnesses
- The Investigator or Investigators
- Witnesses, including fact, character, and expert witnesses, as identified by the parties, the Investigator(s) or The Citadel

Advisors and Representatives
- All parties, whether cadets, students, or employees, may be accompanied by no more than one (1) Advisor
- Cadets and students may be accompanied by an Advisor and a Representative, as prescribed above, or two (2) Representatives

Hearing Procedures
For all live hearings conducted under this Title IX Policy, the procedure will be as follows:

- The Board President will open and establish rules and expectations for the hearing;
- The Board members and/or the Investigator(s) will ask questions of the Parties and Witnesses;
- After the Board members and/or the Investigator ask questions of each Party and Witness, the Parties’ Advisors will conduct cross-examination of each Party and Witness.
- The Board members, the Investigator(s), and the Advisors shall each have the opportunity to ask follow-up questions, subject to the Board President’s authority to limit such follow-up questions for appropriate reasons.

**Advisor Cross-Examination Procedure**

- Each party’s Advisor will conduct live cross-examination of the other party or parties and witnesses. During this live-cross examination, the Advisor may ask the other party or parties and witnesses relevant questions and follow-up questions, including those challenging credibility, directly, orally, and in real time.
- Before any cross-examination question is answered, the voting board members will determine if the question is relevant. The board members’ failure to prevent a witness or party from answering a question shall be deemed a determination that the question is relevant. Cross-examination questions that are duplicative of those already asked, including by the hearing board members, may be deemed irrelevant.

**Review of Transcript/Recording**

The recording of the hearing will be available for review by the parties within five (5) business days, unless there are any extenuating circumstances. The recording of the hearing will not be provided to parties or advisors of choice.

14) **Determination Regarding Responsibility**

The board members responsible for objectively evaluating the relevant inculpatory and exculpatory evidence and making a determination whether there is sufficient evidence, by a preponderance of the evidence, to establish that the respondent violated this policy.

A finding of responsibility by a preponderance of the evidence means that it is more likely than not, based on all of the evidence and reasonable inferences from the evidence, that the respondent violated the policy. If the evidence weighs so evenly that the hearing body is unable to say there is a preponderance on either side, the hearing body must determine that there is insufficient evidence to conclude that a violation of the policy occurred. The determination must be reached by a majority of the panel.

**General Considerations for Evaluating Testimony and Evidence**

The hearing board will objectively evaluate all relevant inculpatory and exculpatory evidence.
The hearing board shall not draw inferences regarding a party or witness’s credibility based on the party or witness’s status as a complainant, respondent, or witness, nor shall it base its judgments on stereotypes about how a party or witness would or should act under the circumstances.

The hearing body will assess credibility by evaluating the totality of the circumstances, including: the details as described by the parties, including the level of detail and specificity provided and how well the individual was able to discuss or elaborate on the details provided; the significance, both objectively and subjectively, of the particular detail or set of details being discussed; the Complainant’s disclosure of the allegations; the parties’ and witnesses’ demeanor at relevant times; the interest, motive or bias of the parties and witnesses; the presence or absence of corroboration where it would reasonably be expected to exist; the consistency over time of the individual’s statements; and the context of the relationships between the parties and the witnesses.

Decision makers have the discretion to determine the weight to give relevant evidence and will generally afford a higher weight to testimony that details a first-hand account as compared to a second-hand account.

**Determination and Sanction**

In cases involving cadets and students, the members of the hearing panel make findings of fact and a recommendation of sanctions. In cases in which the panel does not recommend separation from the college, the Commandant or the Provost, as appropriate, makes the final determination of sanction. In cases in which the panel recommends suspension or dismissal, the Provost makes the final determination of sanction. In cases in which the panel recommends expulsion, or in cases where the Provost recommends expulsion, the President makes the final determination of sanction.

In cases involving employees, the members of the hearing panel make findings of fact and a recommendation of sanctions. The Director of Human Resources, in consultation with the appropriate Vice President, makes the determination of sanction.

In all cases, the sanctioning authority may impose punishment based on the information in the Board’s report as well as the cadet’s or student’s entire education record, or the employee’s personnel file, as appropriate.

**Notice of Determination**

A written Determination Regarding Responsibility and Sanction will be issued simultaneously to all parties through their institution email account, or other reasonable means as necessary. A sample Notice of Determination may be viewed in the Appendix.

**Timeline of Determination Regarding Responsibility**

If there are no extenuating circumstances, the determination regarding responsibility will be issued by The Citadel within ten (10) business days of the completion of the hearing.
Finality

The determination regarding responsibility becomes final either on the date that The Citadel provides the parties with the written determination of the result of the appeal, if an appeal is filed consistent with the procedures and timeline outlined in “Appeals” below, or if an appeal is not filed, the date on which the opportunity to appeal expires.

15) Appeals

Each party may appeal (1) the dismissal of a Formal Complaint or any allegation therein and/or (2) a determination regarding responsibility. To appeal, a party must submit their written appeal within five (5) business days of being notified of the decision, indicating the grounds for the appeal.

The limited grounds for appeal available are as follows:

- Procedural irregularity that affected the outcome of the matter (i.e. a failure to follow the institution’s own procedures);
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
- The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against an individual party, or for or against complainants or respondents in general, that affected the outcome of the matter.

The submission of appeal stays any sanctions for the pendency of an appeal. Supportive measures and remote learning opportunities remain available during the pendency of the appeal.

In cases involving cadets and students in which the sanction imposed is expulsion, the Board of Visitors is the appellate authority. In cases involving cadets and students in which the sanction imposed is less than expulsion, the President is the appellate authority.

In cases involving employees other than faculty in which the sanction imposed is termination, and in all cases of employees in which the sanction imposed is less than termination, the President is the appellate authority. In cases involving faculty in which the sanction imposed is termination, the Board of Visitors is the appellate authority.

16) Informal Resolution

Following receipt of a Formal Complaint, The Citadel may resolve reports through Alternative Resolution, as appropriate based on the circumstances. Alternative Resolution is available only once a formal complaint has been filed, prior to a determination of responsibility, and if the complainant and respondent voluntarily consent to the process in writing. It is important to note that, under the Final Rule and the policy and this resolution process, Alternative Resolution is not available in cases in which an employee (faculty or staff) is alleged to have sexually harassed a student. In all cases, the Title IX Coordinator will have discretion to determine whether or not Alternative Resolution, or any particular form of Alternative Resolution, is appropriate to the circumstances.
Alternative Resolution may involve agreement to pursue individual or community remedies, including targeted or broad-based educational programming or training; supported direct conversation or interaction with the Respondent; mediation; indirect action by the Title IX Coordinator or other appropriate college officials; and other forms of resolution that can be tailored to the needs of the parties. With the voluntary consent of the parties, Alternative Resolution may be used to impose agreed-upon disciplinary sanctions. Any person who facilitates an Alternative Resolution will be trained and free from conflicts of interest or bias for or against either party.

If the parties are interested in pursuing Alternative Resolution, the Title IX Coordinator will send written notices to the parties describing:

1. the allegations at issue;
2. the requirements of the Alternative Resolution process;
3. the circumstances under which the parties are precluded from resuming a formal complaint arising from the same allegations;
4. the right to end the Alternative Resolution process at any time prior to resolution and resume the Formal Complaint process; and
5. the consequences resulting from participating in the Alternative Resolution, including that the records and communications created or maintained as part of the Alternative Resolution process may be viewed by parties, or later used or considered in the Formal Complaint process, including at a hearing.

All parties will be required to return signed copies of the written notices agreeing to the Alternative Resolution process.

With any form of Alternative Resolution, each party has the right to choose and consult with an advisor. The advisor may be any person, including an attorney. The parties may be accompanied by their respective advisors at any meeting or proceeding held as part of Alternative Resolution. While the advisors may provide support and advice to the parties at any meeting and/or proceeding, they may not speak on behalf of the parties or otherwise participate in, or in any manner disrupt, such meetings and/or proceedings.

Any form of Alternative Resolution and any combination of interventions and remedies may be utilized. If an agreement acceptable to The Citadel, the complainant, and the respondent is reached through Alternative Resolution, the terms of the agreement are implemented and the matter is resolved and closed. The Title IX Coordinator or designee will monitor the implementation of the agreement as appropriate. If an agreement between the parties and subject to the Title IX Coordinator’s approval is not reached or if a respondent fails to comply with the terms of the Alternative Resolution, the formal complaint may be referred for investigation or an investigation may resume under the Disciplinary Resolution process. Once any terms of the Alternative Resolution are fully completed and the matter is closed, the parties will be precluded from filing another formal complaint arising from the same set of facts or circumstances.
Prior to reaching a resolution, any party can withdraw from the Alternative Resolution process, and The Citadel will resume the formal complaint process. The Citadel’s goal is to complete an Alternative Resolution within thirty (30) business days of the parties’ written agreement to participate in the process. If The Citadel anticipates the process will take longer, written notification will be provided to the parties with an explanation regarding the delay.

Participation in Alternative Resolution is voluntary, and either party can request to end Alternative Resolution at any time. If an agreement acceptable to The Citadel, the complainant, and the respondent is reached through Alternative Resolution, the terms of the agreement are implemented and the matter is deemed resolved and closed. If an agreement is not reached, and the Title IX Coordinator determines that further action is necessary, or if a respondent fails to comply with the terms of the Alternative Resolution, the matter may be referred for an investigation and Grievance Process.

Where the Complainant or the Respondent withdraws from Alternative Resolution or Alternative Resolution is otherwise terminated for any reason, any statements or disclosures made by the parties during the course of the Alternative Resolution may be considered in a subsequent investigation and hearing in the Grievance Process.

The Title IX Coordinator will maintain records of all reports and conduct referred for Alternative Resolution.

17) Time Frame for Resolution

The Citadel will seek to complete the Grievance Process in a prompt and timely manner consistent with the reasonably prompt timeframes for the major stages of the process designated in this policy. The Citadel may extend any timeframe in this Grievance Process for good cause. An extension may be required for good cause to ensure the integrity and thoroughness of the investigation; to comply with a request by law enforcement; in response to the unavailability of the parties (or their advisors) or witnesses; based on the need for language assistance or accommodation of disabilities; or for other legitimate reasons, such as intervening breaks in the academic calendar, finals periods, the complexity of the investigation, the volume of information or length of the written record, and/or the severity and extent of the alleged misconduct. While requests for delays by the parties may be considered, The Citadel cannot unduly or unreasonably delay the prompt resolution of a report under this Policy.

Reasonable requests for delays by the parties will serve to extend the anticipated time period for resolution of the report. The Title IX Coordinator, in consultation with the Investigator, has the authority to determine whether an extension is required or warranted by the circumstances, and will notify the parties in writing of any extension of the timeframes for good cause and the reason for the extension.

The Citadel’s overarching goal is that all complaints be investigated in a prompt, fair, and impartial manner. Although cooperation with law enforcement may require The Citadel to suspend the fact-gathering portion of the investigation temporarily, The Citadel will promptly resume its investigation as soon as it is notified by the law enforcement agency that the agency has completed its initial evidence gathering process. The Citadel will not, however, wait for the
conclusion of a criminal proceeding to begin its own investigation and, if needed, will take immediate steps to provide appropriate supportive measures for the complainant and respondent.

18) Records

The Office of the Title IX Coordinator will create, and maintain the following records for a period of seven years: records of any actions, including any supportive measures, taken in response to a report or formal complaint; records of investigations, including any determination regarding responsibility and any audio or audiovisual recording or transcript created, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant; any appeal and the result therefrom; any Alternative Resolution and the result therefrom. These records will be maintained in accordance with the privacy protections set forth in Title IX, the Clery Act, FERPA, and state law regarding the privacy of personnel records.

19) Notes

A. Dates of official enactment and amendments:

Approved by the Executive Assistant to the President on ______

B. Responsible Department:

Title IX

C. Responsible Officials:

Title IX Coordinator

D. Cross References:


7. RESCISSION

Memorandum Number 11, dated 4 April 2019 and any previous versions, are rescinded. Memorandum Number 51, dated 30 June 2000, is rescinded. Memorandum Number 2-26, dated 10 January 2012, is rescinded. Memorandum Number 2-025, dated 8 November 2019, is rescinded. Memorandum Number 2-026, dated 8 November 2019, is rescinded.

8. REVIEW

Review this policy on an annual basis.