

THE CITADEL  
The Military College of South Carolina  
171 Moultrie Street  
Charleston, SC 29409

MEMORANDUM  
NUMBER 2-024

17 December 2020

**TITLE IX GRIEVANCE 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.

The Citadel does not discriminate on the basis of sex in any education program or activity that it operates. This prohibition extends to both admission and employment. This Policy sets forth the grievance procedures by which allegations of sexual harassment and retaliation by individuals subject to The Citadel's control or supervision 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. Any inquiries about such discrimination may be referred to the Title IX Coordinator, to the Assistant Secretary of Education, or both.

**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.](#)
- E. Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, [20 USC §1092\(f\)](#), [34 CFR § 668.46](#) and [668.41](#)
- F. Family Educational Rights and Privacy Act, [20 USC § 1232g](#)
- G. South Carolina Human Affairs Law, [S.C. Code Ann. §1-13-10 et. seq.](#)

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

### 3. DEFINITIONS

Conduct that does not meet one or more of the Prohibited Sexual Misconduct Definitions may still be prohibited under The Citadel College Regulations which can be viewed at <http://www.citadel.edu/root/images/policies/college-regulations.pdf>, as well as relevant cadet, student and employee rules and regulations, available on The Citadel's policies page at <https://www.citadel.edu/root/policies/college-policies>.

#### A. Prohibited Sexual Misconduct Definitions

For the purposes of this policy, the Prohibited Misconduct Definitions only apply if they occur in the United States, within Citadel's Education Program or Activity and when the Complainant is participating or seeking to participate in an Education Program or Activity at the time of the filing of the complaint.

The Citadel will treat attempts to commit any of the Prohibited Misconduct Definitions as if those attempts have been completed.

1. Sexual Harassment – means conduct on the basis of sex that satisfies one or more of the following:
  - a. Quid Pro Quo Sexual Harassment – An employee of The Citadel conditioning the provision of an aid, benefit, or service of The Citadel on an individual's participation in unwelcome sexual conduct;
  - b. Hostile Environment Harassment – 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 Citadel's education program or activity.
  - c. Sexual Assault (as defined in the Clery Act) - A 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 (Rape): The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
    2. Sexual Contact without consent (fondling): The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances

where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.

3. Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law. In South Carolina that includes parent, child, aunt, uncle, niece, nephew, grandparent, grandchild, sibling (in whole or half-blood).
  4. Statutory Rape – Sexual intercourse with a person who is under the statutory age of consent, which is 16 years old.
- d. Dating Violence: Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.
- (i) The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
  - (ii) For the purposes of this definition—
    - (A) Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
    - (B) Dating violence does not include acts covered under the definition of domestic violence.
- e. Domestic violence: Any felony or misdemeanor crimes of violence committed: (A) by a current or former spouse or intimate partner of the victim, (B) by a person with whom the victim shares a child in common, (C) by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, (D) by a person similarly situated to a spouse of the victim under South Carolina domestic or family violence laws, (E) 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.
- f. Stalking: 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.

- g. 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.

## B. Additional Definitions

### 1. 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. The advisor of choice may be, but is not required to be, an attorney. For additional information on the role of the advisor, expectations and limitations, see Section 4.K.

### 2. Alternative Resolution

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

### 3. Complainant

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

### 4. Confidential Resource

An employee of The Citadel who is not an Official With Authority (OWA) and who is **not** obligated to report Sexual Misconduct to the Title IX Coordinator

without the Complainant's consent (irrespective of Clery Act Campus Security Authority status). 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. For a list of Confidential Resources, see Section 4.D.

## 5. Consent

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

- a. knowing, and
- b. voluntary, and
- c. clear permission
- d. by word or action
- e. 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. This definition of consent applies notwithstanding a 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.

6. Education Program or Activity

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

- a. Any on-campus premises
- b. Any off-campus premises in the United States that The Citadel has substantial control over. This includes buildings or property owned or controlled by a recognized Citadel-sponsored organization.
- c. Any off-campus location, events, or circumstances in the United States in which The Citadel exercised substantial control over the both the Respondent and the context in which the sexual harassment occurs.
- d. 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 Citadel has substantial control and are within the United States.

7. 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. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in an education program or activity of the College. **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 Section 3.B(7).**

8. Title IX Grievance Process (or “Grievance Process”)

The process of determining whether a Report constitutes Sexual Misconduct under this policy. The Title IX Grievance Process is broad and includes an Investigation. The Title IX Grievance Process begins upon The Citadel’s receipt of a Report of Sexual Misconduct and includes the Title IX Coordinator’s Initial Assessment, the Intake Meeting with a Complainant, the filing of a Formal Complaint, the Investigation – including the Hearing, and the Appeal, if any.

## 9. Investigation

The formal process of gathering evidence related to a Formal Complaint. The Investigation is conducted by officials of The Citadel assigned by the Title IX Coordinator. The Investigation commences with a Notice of Investigation and concludes with a Final Determination after a Hearing. or if there is an appeal, the issuance of written decision describing the result of the appeal. A complete description of the Investigation process is contained at Section 4.L.

## 10. 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. If an OWA is notified of an incident, The Citadel must respond promptly, including notifying the Title IX Coordinator who will promptly contact the complainant.

## 11. Relevant Evidence and Questions

- a. Evidence is relevant if (1) it has any tendency to make a fact more or less probable than it would be without the evidence and (2) the fact is of consequence in determining whether sexual harassment occurred.
- b. A question is relevant if it will elicit relevant evidence, as described in 3.B.11.a 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:

- a. Evidence and questions about the Complainant’s sexual predisposition or prior sexual behaviors unless:
  - i. They are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or
  - ii. They concern specific incidents of the Complainant’s prior sexual behavior with respect to the Respondent and are offered to prove consent.
- b. 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 spousal

privilege, unless the person holding such privilege has waived the privilege.

- c. Any party's medical, psychological, and similar records unless the party has given voluntary, written consent.

#### 12. Report

Notification of conduct that could constitute sexual harassment to a Responsible Employee of The Citadel, including but not limited to a Confidential Resource.

**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 the Title IX Coordinator, The Citadel is not required to initiate an "Investigation," as prescribed in section 4.L. **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 Section 3.(B)7 above.**

#### 13. Reporter

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

#### 14. Respondent

An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

#### 15. Responsible Employee

A Responsible Employee is an employee of The Citadel who The Citadel requires to promptly and fully report complaints of or information regarding sexual harassment to the Title IX Coordinator. Responsible Employees include all Public Safety personnel, Human Resources personnel, College Administrators, Supervisors, Academic Deans and Department Chairs, full-time and part-time faculty, TAC Officers, Commandant's Office personnel, employee advisors to recognized student organizations, and all student employees who supervise, teach or advise others in their capacity as employees (i.e. teaching assistants, admissions ambassadors, camp counselors, CSI student workers, etc.). In addition, all Athletics staff, to include the Athletics Directors, coaches and assistant coaches of Citadel teams, athletic trainers, team physicians, and athletic student assistants and managers are Responsible Employees.



## 16. Witness

An individual who has information relevant to the incident. Witnesses include individuals who observed the acts in question, can provide contextual information, or have other information related to the incident, the disclosure, the parties, or related matters. Witnesses may provide subject matter expert information. In limited situations, witnesses may provide character information.

## 4. POLICY

- A. The Citadel, The Military College of South Carolina (“The Citadel”) is committed to creating an educational and employment environment free of harassment and discrimination for all of its employees, students, and College community. 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 Final Title IX Rule issued by the U.S. Department of Education in May 2020<sup>[1]</sup> (Final Rule), The Age Discrimination in Employment Act, The Americans with Disabilities Act and ADA Amendments Act, and The Equal Pay Act.

The Citadel also prohibits unlawful harassment in any form, including, but not limited to Title IX Sexual Harassment. Sexual Harassment, as defined by the Title IX regulations, includes Sexual Assault, Dating Violence, Domestic Violence and Stalking, as defined by the Jeanne Clery Disclosure of Campus Security Act (Clery Act), as amended by the Violence Against Women Reauthorization Act of 2013 (VAWA).

In addition, The Citadel prohibits Retaliation against any individual for the purpose of interfering with any right or privilege secured by this policy or federal or state laws, or because the individual makes a good faith report of Title IX Sexual Harassment, files a Formal Complaint, testifies, assists, participates, or refuses to participate in any manner in an investigation,

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<sup>[1]</sup> The full text of the Final Rule and its extensive Preamble are available here: <http://bit.ly/TitleIXReg>

proceeding, or hearing related to a report or Formal Complaint of prohibited conduct under this policy.

This policy applies to all students, staff, faculty, and other individuals participating in or seeking to participate in The Citadel's program or activities, including education and employment. Any individual found responsible for engaging in Title IX Sexual Harassment in violation of this policy will face disciplinary sanctions up to and including expulsion (for students) or termination from employment (for employees).

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](mailto: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](mailto:OCR@ed.gov)  
Web: <http://www.ed.gov/ocr>

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

## B. Non-Discrimination in Application of Policy

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>.

#### C. 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.

#### D. 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 bound by 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.

Certain individuals are designated as having "confidentiality." For reports made to employees designated with having confidentiality, The Citadel will respect the reporting party's expectations of privacy to the extent possible by law, while still ensuring compliance with other reporting obligations. For example, complaints involving minors will not be kept confidential.

Individuals designated as having confidentiality may 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 to Reporters about The Citadel's 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 Citadel Officials will provide privacy, but not confidentiality, upon receiving a complaint of prohibited conduct, and may also be contacted to discuss concerns regarding this policy and procedures:**

**Title IX Coordinator**

Valerie Mercado

Title IX Coordinator/Compliance Officer

171 Moultrie Street

Bond Hall, Rm 192

Charleston, SC 29409

[vmercado@citadel.edu](mailto:vmercado@citadel.edu)

(843) 953-6881(office)/(724) 433-0462 (cell)

**Deputy Title IX Coordinators**

Shawn Edwards, Chief Diversity Officer

(843) 953-6989  
[shawn.edwards@citadel.edu](mailto:shawn.edwards@citadel.edu)

Sergeant Major Jason P. Moffitt  
United States Marine Corps (Ret)  
(843) 953-0503 | (561) 704-8590  
[jmoffitt@citadel.edu](mailto:jmoffitt@citadel.edu)

Chief Master Sergeant Jennifer Kersey  
United States Air Force (Ret)  
(843) 953-5535 | (253) 495-7615  
[jkersey@citadel.edu](mailto:jkersey@citadel.edu)

Major Matthew D. Raines  
United States Marine Corps Reserve  
(843) 953-8171 | (843) 901-1488  
[rainesm1@citadel.edu](mailto:rainesm1@citadel.edu)

Captain Wouter Sijtsma  
Royal Netherlands Air Force  
(843) 953-0505  
[wsijtsma@citadel.edu](mailto:wsijtsma@citadel.edu)

Pam King  
Office of Institutional Research  
Bond Hall 366  
(843) 953-6790 | (843) 670-1898  
[kingp1@citadel.edu](mailto:kingp1@citadel.edu)

**Office of the Commandant**

COL Heyward Hutson, Asst. Commandant for Discipline  
(843) 953-6931  
[hhutson@citadel.edu](mailto:hhutson@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](mailto:psaf@citadel.edu)  
208 Richardson Ave.  
Charleston, SC 29403

**Officials With Authority**

Please see the list of Citadel OWAs in [Annex C](#).

## **Responsible Employees**

See identification of Responsible Employees in Section 3.B.15

**The following Citadel Officials/Offices may provide confidentiality upon receiving a report of misconduct and provide supportive measures to the student or employee:**

### **Director of Campus Advocacy, Response, and Education (CARE)**

Janet Shealy

105 Thompson Hall  
shealyj1@citadel.edu  
(843) 953-7277 (office)  
(843) 425 – 1315 (cell)  
<https://www.citadel.edu/root/care>

### **The Citadel Counseling Center**

203 Richardson Ave  
<https://www.citadel.edu/root/counselingcenter>

### **Ombudspersons**

Colonel Robert Pickering, Jr.

37 Thompson Hall  
(843) 953-5096 (office)  
(843) 437- 9645 (cell)  
robert.pickering@citadel.edu  
ombud@citadel.edu  
<https://www.citadel.edu/root/ombudsperson>

Kathy Kroupa, Sr. Associate Athletic Director

McAlister Fieldhouse  
(843) 953-6604  
kkroupa@citadel.edu  
<https://www.citadel.edu/root/ombudsperson>

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

<https://www.citadel.edu/root/ombudsperson>

### **The Citadel Chaplain to the Corps of Cadets**

Currently Under Recruitment

<https://www.citadel.edu/root/chapel-chaplains>

#### **E. 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 recipient 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 in section 4.L. **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 Section 3.(B)7 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](http://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](mailto:vmercado@citadel.edu)  
(843) 953-6881 (office)  
(724) 433-0462 (cell)

#### **Criminal Reporting Options:**

A Complainant may also seek to initiate a criminal complaint, separate from, or in conjunction with a report to The Citadel. At the Complainant's request, the Title IX Coordinator will assist the Complainant in contacting local law enforcement and will cooperate within the extent permitted by law with law

enforcement agencies if a Complainant decides to pursue the criminal process. Please contact the Title IX Coordinator during business hours if you need assistance in filing a police report.

1. 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](mailto:psaf@citadel.edu)  
208 Richardson Ave.  
Charleston, SC 29403
2. South Carolina Law Enforcement Division (SLED)  
(803) 737-9000 (24/7); or the Ninth Circuit Solicitor

### **External Reporting Options:**

1. A person may also file a complaint with the U.S. Department of Education's Office for Civil Rights regarding an alleged violation of Title IX by contacting the following office:

#### **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](mailto:OCR@ed.gov)  
Web: <http://www.ed.gov/ocr>

2. Employees may also file a charge with the Equal Employment Opportunity Commission (EEOC) regarding an alleged violation of Title VII by calling 1800-669-4000 or visiting <https://www.eeoc.gov/employees/howtofile.cfm>

### **Off-campus Support Resources**

The following agencies can also provide support, advocacy, and resources related to crime reporting and victim services:

1. People Against Rape, a local, non-profit community agency specializing in assisting victims of sexual assault, (843) 745-0144 (24/7);



2. 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.
3. My Sister's House domestic abuse emergency shelter: Crisis Line: 843-744-3242 Admin Office: 843-747-4069
4. Rape, Abuse & Incest National Network - RAINN: <https://www.rainn.org/get-help>
5. City of Charleston Police Department Victim's Advocates  
Catrice Smalls, Victim Advocate (843) 720-2425  
Chelsea Hagan, Child Advocate (843) 720-3031  
Vera Witt, Spanish Speaking Advocate (843) 720-3032  
Joshua Williamson, Elder Advocate (843) 720-2534

#### F. Initial Assessment

##### 1. Response to Report of Sexual Misconduct

Upon receipt of a Report of Sexual Misconduct, whether from a Complainant or from a third-party (*i.e.* a "Reporter"), 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:

- a. the availability of supportive measures with or without the filing of a Formal Complaint;
- b. the process for filing a Formal Complaint; and
- c. ascertain and consider the Complainant's wishes with respect to supportive measures.

A Complainant may decline to participate in the Grievance Process, including the Initial Assessment, may request supportive measures only, may file a Formal Complaint, or may request more time to consider his or her options. Regardless of the Complainant's actions, 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 eligible for reasonably available supportive measures, regardless of whether the Grievance Process or Alternative 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 reported conduct falls within the jurisdiction and scope of this Policy.

## 2. Intake Meeting

The Initial Assessment typically includes an 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 conducting 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.

## 3. 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:

- a. Referral to counseling, medical, and/or other healthcare services
- b. Referral to the Employee Assistance Program
- c. Extensions of deadlines or other course-related adjustments

- d. Modifications of work or class schedules
- e. Campus escort services
- f. No-trespass Orders
- g. Restrictions on contact between the parties (no contact orders)
- h. Changes in work or housing locations
- i. Leaves of absence
- j. Increased security and monitoring of certain areas of the campus

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

#### 4. 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 harassment justifies a removal. In determining whether to remove a student respondent pursuant to this section F.4, The Citadel will utilize the procedures prescribed in [Memorandum 2-9 Temporary Suspension of Students](#). If The Citadel determines such removal is necessary, the student Respondent will be provided notice and an opportunity to challenge the decision immediately following the removal.

#### 5. Administrative Leave

The Citadel retains the authority to place a non-student employee Respondent on administrative leave during the Title IX Grievance Process and will utilize the procedures described in [Memorandum 2-9 Progressive Discipline](#).

#### G. 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 alleging sexual harassment against a respondent and requesting that The Citadel investigate the allegation. 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:

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

A Complainant who files a Formal Complaint may elect, at any time, to address the matter through The Citadel's Alternative Resolution Process. See Section 4.P.

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. See Section 4.Q.

At any time during the Title IX Grievance Process, 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.

#### H. Consolidation of Formal Complaints

The Citadel 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.

## I. Determining Jurisdiction

### 1. Required Elements

The Citadel 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:

- a. The conduct is alleged to have occurred in the United States;
- b. The conduct is alleged to have occurred in a Citadel education program or activity as described in 3.B.6; and
- c. The alleged conduct, even if proved, 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.

### 2. Mandatory Dismissal

If any of the conditions in Section I.1 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.

### 3. Discretionary Dismissal

The Citadel 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. 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;
- b. The Respondent is no longer enrolled or employed by The Citadel; or,
- c. 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.

#### 4. 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.

#### 5. Initiation of Non-Title IX Grievance 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.

#### J. 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 sufficient time to prepare a response before any initial interview. A sample Notice of Allegations is at [Annex A](#).

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.

## K. Advisors

Each party may have an Advisor present during any meeting, interview, and hearing. 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.

### 1. 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 below, an Advisor shall not participate directly in such meeting, interview or hearing, *i.e.* an advisor shall not answer questions for, or ask questions on behalf of, their advisee, or make statements for the advisee. Advisors may be directed to leave the meeting, interview, or hearing if they fail to follow these instructions, become disruptive, or cause an unreasonable delay in the proceeding.

- 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 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 but shall not address the Investigators, witnesses, or other parties.
- c. Pre-Interview Meetings: An Advisor may 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.

Advisors shall maintain the privacy of the records shared with them. Unless explicitly authorized by The Citadel, Advisors shall not share records with third-parties, disclose records publicly, or use records for purposes external to the Title IX Grievance Process.

## 2. 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 of Advisors. 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 contact organizations such as:

- a. FACE ( <http://www.facecampusequality.org>)
- b. SAVE ( <http://www.saveservices.org>)

For assistance identifying an Advisor, Complainants may wish to contact organizations such as:

- a. The Victim Rights Law Center ( <http://www.victimrights.org>),
- b. The National Center for Victims of Crime (<http://www.victimsofcrime.org>), which maintains the Crime Victim's Bar Association.

## L. Investigation

### 1. Notice of Investigation

An investigation will occur within a reasonably prompt timeframe to determine if the alleged conduct constitutes sexual harassment. The investigation commences with the issuance of a Notice of Investigation to both the respondent and complainant. A sample Notice of Investigation is



at [Annex B](#). The Investigation concludes with a final determination after a Hearing.

## 2. Appointment of Investigator(s)

When the decision is made to initiate an investigation, The Citadel will designate an Investigator or Investigators 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.

## 3. Gathering Evidence

The Investigator, not the parties, is responsible for gathering relevant evidence. All parties will have the opportunity to present inculpatory and exculpatory evidence and name witnesses, including fact and expert witnesses. The Investigator will seek to meet separately with the Complainant, Respondent and relevant witnesses. The parties are encouraged to preserve and provide all relevant information, such as documents, electronic communications, as promptly as possible to facilitate prompt resolution. The failure to voluntarily provide information can affect The Citadel's ability to conduct a prompt, thorough and equitable investigation.

Parties to the Grievance Process do not have the right to depose parties or witnesses, nor to invoke a court system's subpoena powers to compel parties or witnesses to appear at hearings, or otherwise. The Citadel will compel cadets, students and employees to appear at meetings and hearings, but it does not have subpoena power, and it cannot compel attendance of third parties. The College expects all parties and witnesses to be truthful in information that they provide to the College, and the failure to be truthful in this process may constitute a separate violation of College policy.

## 4. Presumption that Respondent is Not Responsible

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.

#### 5. Witnesses

The Investigators will interview witnesses as part of the Investigation. The name(s) of the witness(es) and the information gathered in the interviews will be included in the written investigative report.

#### 6. 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 consider information publicly available from online sources. 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.

#### 7. Inspection and Review of Evidence and Investigative Report

At the completion of the Investigation, the Investigator(s) will create an Investigative Report that fairly summarizes the relevant evidence gathered during the Investigation.

Prior to the completion of the Investigative Report, the Investigator will send, to each Party and the Party's Advisor, the evidence obtained through the investigation. The Citadel will send the evidence through electronic methods or via hard-copy, in its sole discretion. 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 will be any evidence that is directly related to the allegations raised in the Formal Complaint. It will include any:

- a. 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;
- b. 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 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) 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.

No later than ten (10) days prior to the hearing, the Investigator will send the completed Investigative Report to each party and the party's Advisor for their review and written response. The Investigative Report is not intended to catalog all evidence obtained by the investigator, but only to provide a fair summary of relevant, inculpatory and exculpatory, evidence. Evidence that, in the reasoned judgment of the investigator, is not directly related to the allegations in the Formal Complaint will be included in the appendices to the Investigative Report.

## M. Hearing

1. The Citadel will not issue a disciplinary sanction under this policy without holding a live hearing with cross-examination as described below, 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 for cases involving students.

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 when answering questions. 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 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.

2. 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.

### 3. Pre-Hearing Meeting

The Board President may, but is not required to, meet with the Parties and their Advisors to review potential questions and topics for the hearing. The Board President may make preliminary rulings on admissibility during these meetings, but shall not make any final determinations on admissibility until the Hearing. Final determinations on the admissibility of evidence are always subject to developments during the Hearing.

### 4. 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:

#### a. Complainant and Respondent (The Parties)

- 1) The parties cannot waive their right to a live hearing; however, neither party is required to participate in a live hearing.
- 2) The Citadel may 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 submit to live cross-examination at the hearing 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.
- 3) The Citadel will not threaten, coerce, intimidate or discriminate against the party in any attempt to secure the party's participation.

#### b. The Decision-Maker(s)

- 1) In cases involving students, the hearing body will consist of a panel of three (3) decision-makers. In cases involving employees, decision-makers may be one or more individuals.
- 2) No member of the hearing body will also have served as the Title IX Coordinator, the Investigator in the pending case, or Advisor to any party in the case, nor may any member of the hearing body subsequently serve as the appellate authority in the case.
- 3) 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 of or against the parties in the particular case.

- 4) The hearing body will be trained on content provided to investigators, procedures to serve impartially, issues of relevance, and any technology to be used at the hearing.
- 5) The parties will have an opportunity to challenge each decision-maker's participation at the commencement of the live hearing.

c. Witnesses

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

d. Advisors

All parties, whether cadets, students, or employees, may be accompanied by an Advisor of choice.

5. Hearing Procedures

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

- a. The Board President will open and explain rules and expectations for the hearing;
- b. The Board members will ask questions of the Parties and Witnesses;
- c. After the Board members ask questions of each Party and Witness, the Parties' Advisors will conduct cross-examination of each Party and Witness.
- d. The Board members 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.

6. 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. Questions and evidence about the complainant's prior sexual behavior is not relevant unless they are offered to prove that someone other than the respondent committed the conduct alleged in the complaint, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. Cross-examination questions that are duplicative of those already asked, including by the hearing board members, may be deemed irrelevant.

#### 7. 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.

#### N. Determination Regarding Responsibility

The board members are 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.

#### 1. General Considerations for Evaluating Testimony and Evidence

- a. The hearing board will objectively evaluate all relevant inculpatory and exculpatory evidence. The hearing board shall not draw inferences regarding a party or witness' 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.
- b. 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 overtime of the individual's statements; and the context of the relationships between the parties and the witnesses.

- c. 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.

## 2. Determination, Sanction, and Remedies

- a. In cases involving 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.
- b. 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.
- c. 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.
- d. Where the decision-maker(s) finds that a respondent has violated this policy, a sanction proportionate to the severity of the violation will be issued. Sanctions range from mandatory education to separation from the College. Student sanctions may consist of dismissal, expulsion, suspension, company or battalion transfers, mandatory training, and disciplinary service, among other potential sanctions. Employee sanctions may include termination, written reprimand, suspension, among other potential sanctions.
- e. Remedies implemented may include the following:
  - a. Permanent one-sided No-Contact Orders;



- b. Counseling
- c. Extensions of deadlines or other course-related adjustments
- d. Modifications of work or class schedules
- e. Campus escort services
- f. Mutual restrictions on contact between the parties
- g. Changes in work or housing locations
- h. Leaves of absence
- i. Increased security and monitoring of certain areas of the campus
- j. The continuation or implementation of any service the Complainant could have been eligible for or was receiving as Supportive Measures
- k. Other remedies deemed appropriate

### 3. 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.

### 4. 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.

### 5. Finality

The determination regarding responsibility becomes final either on the date that the institution 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.

## O. Appeals

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

3. The limited grounds for appeal are as follows:
  - a. Procedural irregularity that affected the outcome of the matter (i.e. a failure to follow the institution's own procedures);
  - b. 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;
  - c. 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.
4. Supportive measures and remote learning opportunities remain available during the pendency of the appeal.
5. In cases involving cadets and students in which the sanction imposed is expulsion, the Board of Visitors is the appellate authority.

In cases involving 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.

#### P. Alternative Resolution

1. Following receipt of a Formal Complaint, The Citadel may resolve reports through Alternative Resolution, as appropriate based on the circumstances.
2. 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. Pursuant to 34 CFR Part 106, The Citadel can not offer Alternative Resolution in cases which allege an employee sexually harassed a student. In all other 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.
3. 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.

4. 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 implementation of the Grievance Process.
5. 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.
6. The Title IX Coordinator will maintain records of all reports and conduct referred for Alternative Resolution, as well as any result.

#### Q. Time Frame for Resolution

1. 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, final examination 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 will not unduly or unreasonably delay the prompt resolution of a Report under this Policy.
2. Reasonable requests for delays by the parties may result in extension of the 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.

3. The Citadel's overarching goal is to resolve all complaints in a prompt, fair, and impartial manner. The Citadel will coordinate with law enforcement and, at its direction, may suspend the school's investigation temporarily. In such event, The Citadel will promptly resume its investigation upon authorization by law enforcement. The Citadel will not, however, wait for the conclusion of a criminal proceeding to begin its own investigation and, as appropriate, will take immediate steps to provide supportive measures for the complainant and respondent.

#### R. 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; and a rationale as to why a complaint was not filed, and if a Complainant was not provided supportive measures, a rationale as to why supportive measures were not provided; 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; all training materials used to train Title IX Coordinators, Investigators, Decision-makers, and those who facilitate the informal resolution process. 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.

#### S. Prevention, Awareness, and Training Programs

The Citadel engages in comprehensive, intentional, and integrated programming, initiatives, strategies, and campaigns intended to reduce and eliminate sexual misconduct or other forms of prohibited conduct which: are culturally relevant, inclusive of diverse communities and identities, are responsive to community needs, and informed by research, or assessed for value, effectiveness, or outcome; consider environmental risk and protective factors as they occur on the individual, relationship, institutional, community and societal levels; and include primary prevention and awareness programs directed at incoming students and ongoing prevention and awareness campaigns directed at current students.

These primary prevention and awareness programs include programming on minimizing the risk of incidents, as well as bystander intervention.

## **5. COMPLIANCE**

Violation of these rules will result in disciplinary sanctions. The sanctions imposed range from written warnings to expulsion from the college, including expulsion from enrollment for cadets and students and termination of employment for employees, if appropriate. Disciplinary action against an employee, cadet, or student by the college does not preclude the possibility of criminal charges against that individual. The filing of criminal charges similarly does not preclude disciplinary action by The Citadel. The choice of sanction will depend on the individual circumstances of the case, including any extenuating circumstances.

Failure to follow the procedures in this policy may result in the dismissal of charges against a respondent, or the dismissal of an appeal.

## **6. NOTES**

### **A. Dates of official enactment and amendments:**

Approved by the Senior Vice President for Operations and Administration on 17 December 2020.

### **B. Responsible Department:**

Office of the Title IX Coordinator and the Title IX Council.

### **C. Responsible Official:**

Title IX Coordinator and the Title IX Council.

### **D. Cross References:**

The Citadel College Regulations -  
<http://www.citadel.edu/root/images/policies/college-regulations.pdf>

## **7. RESCISSION**

This Policy Memorandum Number 2-024 rescinds the following:

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.

Memorandum Number 2-024, dated 23 October 2020, is rescinded.

## 8. REVIEW

The policy will be reviewed on an annual basis.

FOR THE PRESIDENT:

OFFICIAL

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THOMAS G. PHILIPKOSKY  
Colonel, USAF, Retired  
Senior Vice President for Operations  
and Administration

Attachments:

Annex A, [Sample Notice of Allegation Letter](#)

Annex B, [Sample Notice of Investigation](#)

Annex C, [OWAs](#)

Annex D, [Citadel Title IX Decision Tree](#)