

# H-120: Equity Resolution Procedure

## Contents

1.	<a href="#">Complaints Under This Procedure</a>	3
2.	<a href="#">Initial Assessment</a>	3
	<a href="#">No Contact Orders</a>	5
3.	<a href="#">Resolution Options</a>	5
a.	<a href="#">Informal Resolution</a>	5
b.	<a href="#">Formal Resolution (Investigation)</a>	7
4.	<a href="#">Impermissible Questions and Inquiries</a>	9
5.	<a href="#">Delivery of Case Correspondence</a>	10
6.	<a href="#">Notice of Meetings</a>	10
7.	<a href="#">Dismissal of a Complaint</a>	10
8.	<a href="#">Crossclaims</a>	11
9.	<a href="#">Consolidation of Complaints</a>	11
10.	<a href="#">Delays in the Process and Interactions with Law Enforcement</a>	11
11.	<a href="#">Supportive Measures</a>	11
12.	<a href="#">Emergency Removal</a>	12
	<a href="#">Students</a>	12
	<a href="#">Employees</a>	12
13.	<a href="#">Recording Prohibited</a>	13
14.	<a href="#">Witnesses</a>	13
15.	<a href="#">Advisors</a>	13
	<a href="#">Advisor's Role</a>	13
16.	<a href="#">Sanctions</a>	15
17.	<a href="#">Failure to Complete Sanctions</a>	17
18.	<a href="#">Long-Term Remedies/Actions</a>	17
19.	<a href="#">Withdrawal or Separation During Resolution Proceedings</a>	18
20.	<a href="#">Appeals</a>	18
	<a href="#">What Can Be Appealed</a>	18
21.	<a href="#">Grounds for Appeal Appeals are limited to the following grounds:</a>	20
22.	<a href="#">Statement of the Rights of the Parties</a>	20
23.	<a href="#">Disabilities Accommodation in the Equity Resolution Procedure</a>	21
24.	<a href="#">Student's Right to Appeal a Removal or Expulsion in Certain Circumstances</a>	21

<a href="#">Conduct of Hearing</a> .....	22
<a href="#">25. Revision</a> .....	24

Gateway Technical College, through its Office for Equal Opportunity and Civil Rights, will act on any report received alleging a violation of policy H-110: Equal Opportunity, Civil Rights, and Sexual Harassment (also referred to as the nondiscrimination policy).

When a discrimination complaint alleges that Gateway’s policy or practice discriminates on the basis of any protected class/characteristic, Gateway is not considered a respondent.

For the purposes of this procedure, the title of Director of Compliance is used throughout. The Director of Compliance also serves as Gateway’s Title IX Coordinator. For definitions of important terms, please see policy H-110: Equal Opportunity, Civil Rights, and Sexual Harassment.

## 1. Complaints Under This Procedure

The following persons have a right to make a complaint of sex and other protected class/characteristic discrimination, excluding complaints of sex-based harassment, requesting that Gateway investigate and make a determination about alleged discrimination and harassment:

- A complainant.
- A parent, guardian, or other authorized legal representative with the legal right to act on behalf of a complainant.
- The Director of Compliance, under the conditions outlined in this procedure.

With respect to complaints of sex and other protected class/characteristic discrimination other than sex-based harassment, in addition to the persons listed above:

- Any student or employee.
- Any person other than a student or employee who was participating or attempting to participate in Gateway’s education program or activity at the time of the alleged sex discrimination.

In addition, anyone may make a report (as opposed to a complaint) about any type of discrimination and harassment.

Title IX sexual harassment allegations that fall under 34 CFR 106 (Nondiscrimination on the basis of sex in education programs and activities receiving federal financial assistance), as well as cases that include such allegations in addition to any other protected class discrimination arising from the same set of facts (known as mixed motive cases), are all resolved using the grievance process that complies with 34 CFR 106.45 as described in policy H-130: Title IX Grievance Procedure. This means that allegations that are defined as sexual harassment (to include dating violence, domestic violence, sexual assault, and stalking) but are dismissed under Title IX may be processed under this policy.

## 2. Initial Assessment

Upon receipt of a complaint of any alleged violation of Policy H:110: Equal Opportunity, Civil Rights, and Sexual Harassment, the Office for Equal Opportunity and Civil Rights conducts an initial assessment to determine if the conduct, as alleged and if proven, would reasonably constitute a violation of Gateway's policy. Stated another way, the initial assessment determines if there's reasonable cause to believe that the conduct, as alleged and taken as accurate, would be a violation of Gateway's nondiscrimination policy. Reasonable cause means a state of facts found to exist that would warrant a reasonably intelligent and prudent person to believe that the policy was violated.

The initial assessment is generally completed within seven (7) business days and may include the following steps:

- Review of the complaint, any available evidence, and any relevant prior reports.
- Offer supportive measures to the complainant.
- Interview the complainant if necessary to make a determination.
- Review the nondiscrimination policy provision(s) relating to the allegations.

Supportive measures, which are not shared with the other parties in a case except in limited circumstances allowed by law, are offered to and implemented as requested and appropriate for the complainant. The complainant has a right to seek modification or reversal of the decision to provide, deny, modify, or terminate supportive measures (see provision #11 for details on supportive measures).

In addition, depending on the circumstances, the free speech rights of employees, the public, and students are considered as part of the initial assessment.

If, upon completion of the initial assessment, the Director of Compliance determines the conduct, as alleged, would reasonably constitute a violation of Gateway's policy, the Director of Compliance will discuss informal and formal resolution options with the complainant.

If, upon completion of the initial assessment the Director of Compliance determines the conduct, as alleged, would not reasonably constitute a violation of Gateway's policy, or the alleged conduct was committed by someone who is not a member of the college community or did not occur in the context of Gateway's programs and activities and has no adverse educational and employment impact, supportive measures are offered to the complainant.

Complaints may be dismissed in accordance with provision #7 of this procedure.

In the absence of a complaint or the withdrawal of any or all of the allegations in a complaint, and in the absence or termination of an informal resolution process, the Director of Compliance will determine whether to initiate a complaint that complies with relevant law. To make this fact-specific determination the Director of Compliance must consider, at a minimum, the following factors:

- The complainant's request not to proceed with initiation of a complaint.
- The complainant's reasonable safety concerns regarding initiation of a complaint.

- The risk that additional acts of discrimination would occur if a complaint is not initiated.
- The severity of the alleged discrimination, including whether the discrimination, if established, would require the removal of a respondent from campus or imposition of another disciplinary sanction to end the discrimination and prevent its recurrence.
- The age and relationship of the parties, including whether the respondent is an employee of Gateway.
- The scope of the alleged discrimination, including information suggesting a pattern, ongoing discrimination, or discrimination alleged to have impacted multiple individuals.
- The availability of evidence to assist a decisionmaker in determining whether discrimination occurred.
- Whether Gateway could end the alleged discrimination and prevent its recurrence without initiating its grievance procedures.

If, after considering these and other relevant factors, the Director of Compliance determines that the conduct as alleged presents an imminent and serious threat to the health or safety of the complainant or other person, or that the conduct as alleged prevents Gateway from ensuring equal access on the basis of a protected class/characteristic to its education program or activity, the Director of Compliance may initiate a complaint. If initiating a complaint under this section, the Director of Compliance will notify the complainant prior to doing so and appropriately address reasonable concerns about the complainant's safety or the safety of others, including by providing supportive measures.

### **No Contact Orders**

At this time and anytime during a resolution process, the Director of Compliance may determine that a no contact order be issued, based on the following criteria:

- The need expressed by the complainant or respondent.
- The ages of the parties involved.
- The nature of the allegations and their continued effects on the complainant or respondent.
- Whether the parties continue to interact directly in Gateway's education program or activity, including through student employment, shared residence or dining facilities, class, or campus transportation.
- Whether steps have already been taken to mitigate the harm from the parties' interactions, such as implementation of a civil protective order.

## **3. Resolution Options**

There are primarily two resolution options for resolving complaints under this procedure: informal and formal resolution.

### **a. Informal Resolution**

Informal resolution is initiated upon a report of an allegations and does not require a complaint be filed to offer this option. The decision to offer an Informal resolution is at the discretion of the Director of Compliance based on the nature of the allegations, including in

situations where the respondent admits responsibility for the alleged conduct. This resolution option is available by the voluntary consent and agreement of all parties. Engaging in an informal resolution process does not waive a complainant's right to an investigation and determination of a complaint as a condition of enrollment or continuing enrollment, or employment or continuing employment, or exercise of any other right.

The informal resolution facilitator cannot have a conflict of interest and must be properly trained.

Before initiation of an informal resolution process, The Director of Compliance, or designee, will send a Notice of Informal Resolution that includes, at a minimum, the following:

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

Upon completion of the informal resolution process, the parties reach an agreement which is only binding on the parties involved in the informal resolution. Potential terms of an informal resolution agreement may include but are not limited to, restrictions on contact and restrictions on the respondent's participation in one or more of Gateway's programs or activities or attendance at specific events, including restrictions Gateway could have imposed as remedies or disciplinary sanctions had Gateway determined that sex discrimination occurred under Gateway's grievance procedure.

Oftentimes, individuals choose informal resolution options because it is a more restorative resolution and can be completed quicker than a formal resolution, though it is no less significant than a formal resolution procedure. If an Informal Resolution option is preferred and appropriate, the Director of Compliance assesses which informal resolution process may serve the situation best or is available and may seek to determine if the respondent is also willing to engage in Informal Resolution.

Records and agreements developed as part of the informal resolution are maintained and may be used as part of the formal resolution process, if applicable.

## **b. Formal Resolution (Investigation)**

An adequate, reliable, and impartial investigation is initiated upon receipt of a complaint and the completion of an initial assessment that indicates there's reasonable cause to believe that the conduct, as alleged and taken as accurate, would be a violation of Gateway's nondiscrimination policy. A formal investigation is also referred to as the resolution process and it is the responsibility of Gateway to conduct an investigation that gathers sufficient evidence to determine whether discrimination occurred.

Gateway promptly resolves complaints which can take 60-90 business days, though the time frame depends on the complexity and number of the allegations, the availability and accessibility of witnesses and evidence, and the need for language assistance, among other factors. Complaints that involved sex-based harassment involving at least one student party, which requires a hearing, are generally resolved within 120 business day. There are always exceptions and extenuating circumstances that can cause a resolution to take longer, but Gateway will avoid all undue delays within its control.

Any time the general timeframes for resolution outlined in Gateway's procedures will be delayed, Gateway will provide written notice to the parties of the delay, the cause for the delay, and an estimate of the anticipated additional time that will be needed as a result of the delay.

The following steps are usually taken during the formal resolution process.

- The Director of Compliance, or designee, will send a Notice of Investigation and Allegations to all parties whose identities are known. This notice must contain the following information, at a minimum:
  - Gateway's grievance procedures.
  - Sufficient information available at the time to allow the parties to respond to the allegations. Sufficient information includes the identities of the parties involved in the incident(s), the conduct alleged to constitute sex discrimination under Title IX or this part, and the date(s) and location(s) of the alleged incident(s), to the extent that information is available to Gateway.
  - A statement that retaliation is prohibited, and
  - A statement that the parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence or an accurate description of this evidence; and if Gateway provides a description of the evidence, the parties are entitled to an equal opportunity to access to the relevant and not otherwise impermissible evidence upon the request of any party.
  - In cases involving allegations of sex-based harassment involving at least one student party, additional notice requirements as listed in provision #26.
- If, in the course of an investigation, Gateway decides to investigate additional allegations of discrimination by the respondent toward the complainant that are not included in the notice provided or that are included in a complaint that is

consolidated, Gateway must provide notice of the additional allegations to the parties whose identities are known.

- The Director of Compliance will assign an investigator or a pair of investigators to conduct the investigation. In many cases, as appropriate, the Director of Compliance conducts the investigation. The investigator assigned to conduct the investigation will be adequately trained to ensure a fair, thorough, and impartial investigation, free of bias and conflicts of interest.
- In cases except sex-based harassment involving at least one student party, prior to and during the investigation, when credibility is a factor and relevant to one or more allegations of discrimination, the parties may submit questions to the investigator to ask the other party. The responses to these questions are incorporated in the investigation report.
- The investigator will interview all available complainants, any relevant witnesses, including those provided by any party, the respondent(s), and any other relevant individual(s) as determined by the investigator.
- Each party is provided an opportunity to review and verify the investigator's interview summary notes of the relevant evidence/testimony from their respective interviews and meetings.
- During the process, each party has an opportunity to present fact witnesses and other inculpatory (evidence that tends to prove the truth of the allegations) and exculpatory evidence that tends to disprove the truth of the allegations) evidence that are relevant (related to the allegations of discrimination under investigation and will aid a decisionmaker in determining whether the alleged sex discrimination occurred) and not otherwise impermissible.
- Prior to the conclusion of the investigation, and at the request of any party, provide the parties with a list of witnesses whose information will be used to render a finding.
- Provide each party with a comprehensive investigation report fully summarizing the investigation, including all interviews, and addressing all relevant evidence. Appendices including relevant evidence will be included.
- Prior to the conclusion of the investigation, provide the parties an electronic draft investigation report that includes all relevant evidence, and provide five (5) calendar days to review and respond to the draft report. The parties may elect to waive the five (5) days and accept the draft report as written. Any party can request up to an additional five (5) days to review the report with good cause, as determined by the Director of Compliance. The draft report generally does not contain the findings of facts, analysis, or conclusion though these are completed in the final report.
- Incorporate relevant elements of the parties' written responses into the final investigation report, include any additional relevant evidence, make any necessary revisions, and finalize the report. The investigator(s) should document all rationales for any changes made after the review and comment period.

- Submit the final report for the review and approval of the final investigation report by the next-level official (e.g. the Equal Opportunity Officer if the Director of Compliance conducts the investigation).
- Share the final report, including the outcome of the investigation and appeal options, electronically simultaneously with all parties.
- In cases where a policy violation is determined using the preponderance of evidence standard (more likely than not to have occurred or not occurred) and sanctions are implemented, the Director of Compliance, generally in coordination with other relevant officials (e.g. campus dean, human resources), implements them upon completion of the investigation, or, in cases of sex-based harassment involving at least one student party, the hearing. In addition, Gateway will promptly implement effective remedies designed to end the discrimination, prevent recurrence, and address the effects of discriminatory conduct.
- Provide the parties an opportunity to appeal the outcome of the investigation consistent with this procedure.

Neither the investigation nor the decisionmaker will consider:

- Incidents not directly related to the possible violation, unless they evidence a pattern.
- The character of the parties.

In cases where Gateway is the respondent in a pattern or practice case, the investigative report may not include all the elements listed in this section.

Gateway maintains considerable latitude in regard to which steps of the process to follow and the final composition of the investigative report in all cases except sex discrimination.

#### **4. Impermissible Questions and Inquiries**

Gateway and parties cannot make inquiries or consider or seek evidence of any party that relate to:

- Irrelevant information (any information that does not aid in showing whether the alleged allegations occurred).
- Evidence that is protected under a privilege as recognized by Federal or State law or evidence provided to a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality.
- A party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless Gateway obtains that party's or witness's voluntary, written consent for use in Gateway's grievance procedures, and
- Evidence that relates to the complainant's sexual interests or prior sexual conduct, unless evidence about the complainant's prior sexual conduct is offered to prove that someone other than the respondent committed the alleged conduct or is evidence about specific



incidents of the complainant's prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

Any impermissible evidence obtained by Gateway for the purpose of evaluating it for permissibility must not be accessed or considered, must not be disclosed; and must not otherwise be used regardless of relevance.

## **5. Delivery of Case Correspondence**

Notices and other case correspondence are made in writing and sent through the college's case management system, Maxient, to the employee or student's official college email address. Should a party not respond to the letter timely, then additional notification methods will be utilized. Once the notice is mailed, emailed, and/or received in-person, notice will be presumptively delivered. If an individual is known to no longer be an employee or student, notices are mailed to their last known address on file.

## **6. Notice of Meetings**

Gateway will make every effort to provide parties with a written notice of the date, time, location, participants, and purpose of all meetings and proceedings with sufficient time to prepare to participate. In situations of sex-based harassment allegations involving at least one student party, Gateway must provide such notice for all meetings.

## **7. Dismissal of a Complaint**

Gateway may dismiss a complaint of discrimination made through its grievance procedures for any of the following reasons:

- Gateway is unable to identify the respondent after taking reasonable steps to do so.
- The respondent is not participating in Gateway's education program or activity and is not employed by Gateway.
- The complainant voluntarily withdraws any or all of the allegations in the complaint, the Director of Compliance declines to initiate a complaint in the absence of a complaint or a withdrawal of any or all of the allegation by a complainant, and Gateway determines that, without the complainant's withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not constitute discrimination, even if proven.
- Gateway determines the conduct alleged in the complaint, even if proven, would not constitute discrimination.

Prior to dismissing the complaint under this section, Gateway must make reasonable efforts to clarify the allegations with the complainant.

In dismissals in which the respondent has been notified of the allegations, Gateway will offer supportive measures to the respondent as appropriate.

Upon dismissal of the complaint, the Director of Compliance will provide the parties, simultaneously, with written notice of the dismissal and the basis for the dismissal. When dismissing a complaint, except if the dismissal occurs before the respondent has been notified of the allegations, Gateway must provide such written notice only to the complainant.

## **8. Crossclaims**

Gateway permits the filing of counterclaims; however, such claims should not be filed for retaliatory purposes.

## **9. Consolidation of Complaints**

Gateway may consolidate complaints of discrimination against more than one respondent, or by more than one complainant against one or more respondents, or by one party against another party, when the allegations of discrimination arise out of the same facts or circumstances. When more than one complainant or more than one respondent is involved, references to a party, complainant, or respondent include the plural, as applicable.

## **10. Delays in the Process and Interactions with Law Enforcement**

The College may undertake a short delay in its investigation (several days to weeks) if circumstances require. Such circumstances include, but are not limited to, concurrent law enforcement activity, the need for language assistance, the absence of parties and/or witnesses, and/or accommodation for disabilities or health conditions. The Director of Compliance will communicate in writing the anticipated duration of the delay and reason to the parties and provide the parties with status updates if necessary and will promptly resume its investigation and resolution process as soon as feasible. During such a delay, Gateway will implement interim actions as deemed appropriate.

Gateway allows reasonable extension of timeframes on a case-by-case basis for good cause with written notice to the parties that includes the reason for the delay.

College action(s) are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

## **11. Supportive Measures**

Gateway's Office for Equal Opportunity and Civil Rights offers and implements appropriate and reasonable responsive supportive measures to complainants upon a report or complaint of alleged harassment, discrimination, and/or retaliation regardless of whether a resolution option is initiated. In addition, supportive measures are available to students subject to certain conduct that occurs off-campus but impacts their education (e.g. sexual assault, stalking, dating/domestic violence).

The Director of Compliance offers and coordinates supportive measures. In addition, if Gateway has initiated grievance procedures or offered an informal resolution process to the respondent, Gateway will offer and coordinate supportive measures for the respondent; either at that time or in the future, if not done so already. The Director of Compliance may, as appropriate, modify or terminate supportive measures at the conclusion of the grievance

procedures or at the conclusion of the informal resolution process, or may continue them beyond that point depending on the circumstances and at the discretion of the Director of Compliance.

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

Supportive measures may vary depending on what Gateway deems to be reasonably available. These measures may include but are not limited to: counseling; extensions of deadlines and other course-related adjustments; campus escort services; increased security and monitoring of certain areas of the campus; restrictions on contact applied to one or more parties; leaves of absence; changes in class, work, housing, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative; and training and education programs related to sex-based harassment

## **12. Emergency Removal**

### **Students**

Gateway may remove a respondent from Gateway's education program or activity on an emergency basis. To do so, Gateway undertakes an individualized safety and risk analysis and determines that the respondent poses an imminent and serious threat to the health or safety of a complainant or any students, employees, or other persons arising from the allegations of discrimination, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal. The challenge should be emailed to the Director of Compliance at [compliance@gtc.edu](mailto:compliance@gtc.edu) within five (5) business days of the notice of removal and will be evaluated and decided by an official not involved in the decision to make the emergency removal. Students facing emergency removal and who challenge such a removal have a right to a hearing under provision #26 of this procedure.

### **Employees**

Gateway may place an employee respondent on administrative leave, with or without pay, during the pendency of a grievance procedure, with or without an individualized safety assessment.

## **13. Recording Prohibited**

No unauthorized audio or video recording of any kind is permitted during investigation meetings or other Equity Resolution Procedure proceedings without the express permission of the Director of Compliance.

## **14. Witnesses**

Witnesses (as distinguished from the parties) are expected to cooperate with and participate in the College's investigation and the Equity Resolution Procedure. Failure of an employee witness to cooperate with and/or participate in the investigation or Equity Resolution Procedure constitutes a violation of this provision and may be subject to discipline.

While in-person interviews for parties and all potential witnesses are ideal, circumstances (e.g., study abroad, summer break) may require individuals to be interviewed remotely. Skype, Zoom, FaceTime, WebEx, or similar technologies may be used for interviews if the Investigator(s) determines that timeliness or efficiency dictate a need for remote interviewing. Gateway will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

Student witnesses may also provide written statements in lieu of interviews or choose to respond to written questions, with the permission of the investigator. Employee witnesses and parties may supplement their interview with a written statement at their discretion.

## **15. Advisors**

Though not a requirement for non-sexual harassment cases, the college has extended this option to parties involved in non-Title IX grievance procedures.

An advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the resolution process. The parties may choose Advisors from inside or outside of the Gateway community.

Gateway cannot guarantee equal advisory rights, meaning that if one party selects an Advisor who is an attorney, but the other party does not or cannot afford an attorney, Gateway is not obligated to provide an attorney.

### **Advisor's Role**

The parties may be accompanied by their advisor in all meetings and interviews at which the party is entitled to be present, including intake interviews. The advisor provides process and emotional support to the party they assist.

### **Advisor Violations of Gateway Policy**

All advisors are subject to the same Gateway's policies and procedures, whether they are attorneys or not, and whether they are selected by a party or assigned by the College. Advisors are expected to advise their advisees without disrupting the meeting.

The parties are expected to ask and respond to questions on their own behalf throughout the investigation phase of the resolution process. Although the advisor generally may not speak on behalf of their advisee, the advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any resolution process meeting or interview. For longer or more involved discussions, the parties and their advisors should ask for breaks to allow for private consultation.

Any advisor who oversteps their role as defined by this procedure will be warned only once. If the advisor continues to disrupt or otherwise fails to respect the limits of the advisor role, the meeting will be ended, or other appropriate measures implemented. Subsequently, the Director of Compliance will determine how to address the advisor's non-compliance and future role in the resolution process.

### **Sharing Information with the Advisor**

Gateway expects that the parties may wish to have Gateway share documentation and evidence related to the allegations with their Advisors. Parties may share this information directly with their Advisor or other individuals if they wish. Doing so may help the parties participate more meaningfully in the Resolution Process.

If a party requests that all communication be made through their attorney advisor, Gateway will generally comply with that request subject to the discretion of the Director of Compliance.

### **Expectations of the Advisor**

Gateway expects an advisor to adjust their schedule to allow the advisor to attend Gateway meetings when planned but may change scheduled meetings to accommodate an advisor's inability to attend, if doing so does not cause an unreasonable delay.

Gateway may also make reasonable provisions to allow an advisor who cannot attend in person to attend a meeting by telephone, video conferencing, or other similar technologies as may be convenient and available.

### **Expectations of the Parties with Respect to Advisors**

The parties are expected to inform the investigator(s) of the identity of their advisor at least two (2) business days before the date of their first meeting with investigators (or as soon as possible if a more expeditious meeting is necessary or desired).

A party may elect to change advisors during the process and is not obligated to use the same advisor throughout the resolution process. The parties are expected to provide timely notice to the Director of Compliance if they change advisors at any time. It is assumed that if a party changes advisors, consent to share information with the previous advisor is terminated, and a release for the new advisor should be secured. In cases of sex-based harassment involving at least one student party, the parties are expected to inform the Director of Compliance of the identity of their hearing advisor, if different from their process advisor, as far in advance as possible, but no less than ten (10) business days before the hearing.

As a public entity, Gateway fully respects the Weingarten rights of employees. For parties who are entitled to union representation, Gateway will allow the unionized employee to have their union representative (if requested by the party) as well as an advisor of their choice present for all resolution-related meetings and interviews. To uphold the principles of equity, the other party (regardless of union membership) will also be permitted to have two advisors.

Witnesses are not permitted to have union representation or advisors in resolution process interviews or meetings.

## 16. Sanctions

Sanctions are consequences imposed by Gateway following a determination under this procedure that the respondent violated policy H:110: Equal Opportunity, Civil Rights, and Sexual Harassment. The intent of sanctions is not punitive but is done with the goal of stopping and preventing discrimination. Factors considered when determining a sanction may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation.
- An individual's disciplinary history.
- Previous findings of a policy violation involving similar conduct.
- The need for sanctions/responsive actions to bring an end to the discrimination, harassment and/or retaliation.
- The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment and/or retaliation.
- The need to remedy the effects of the discrimination, harassment and/or retaliation on the complainant and the community.
- Any other information deemed relevant by the Director of Compliance.

These factors can modify the typical sanction range.

The following are the common sanctions that may be imposed upon students singly or in combination, depending on the nature and facts of a specific claim:

- Educational Activity: Assignment of an appropriate educational activity, such as a webinar, reading, training, etc., that creates awareness and spurs behavioral change.
- Warning: A formal statement that the conduct was unacceptable and a warning that further violation of any Gateway policy, procedure, or directive will result in more severe sanctions/responsive actions.
- Restriction: A limitation on the student's access to identified services, locations, education, community activities or persons. Issued for a specified time frame.
- Restitution: Issued to a student who has committed a violation of this procedure that resulted in staff, institutional or another student's financial loss. May be issued as a condition of return or continued attendance in the college.
- Referral: Issued to a student who has committed a violation of this procedure, and it is determined that continued participation at the college is contingent upon the student attending designated services (college or private vendor) or programs. May be issued for a specified time frame or as permanent and may be issued as a condition of return to or continued attendance at the College.

- Loss of Privileges: Issued to a student who has committed a violation of this procedure, and it is determined that the student may continue attendance at the College with permanent or temporary limitations on the student's access to identified services, locations, or educational community activities.
- No Contact: Issued to a student who has committed a violation of this procedure, and it is determined that the student may continue attendance at the College with permanent or temporary limitations on the student's access to or contact with an identified individual or group(s) of student and/or staff.
- Disciplinary Probation: Issued to a student who has committed a violation of this procedure and will face additional sanctions if any additional violations occur during a specified time frame.
- Expulsion/Dismissal: Permanent removal, issued to a student who has committed a major, egregious or continued violation(s) of this procedure.
- Other Actions: In addition to or in place of the above sanctions, the College may assign any other sanctions as deemed appropriate.

Sanctions for an employee who has engaged in discrimination, harassment, and/or retaliation include:

- Training: Assignment of an appropriate training program (webinar, in-person event, etc.) that creates awareness and spurs behavioral change.
- Warning: A formal statement that the conduct was unacceptable and a warning that further violation of any Gateway policy, procedure, or directive will result in more severe sanctions/responsive actions.
- Restriction: A limitation on the employee's access to identified services, locations, or persons. Issued for a specified time frame.
- Restitution: Issued to an employee who has committed a violation of this procedure that resulted in staff, institutional or student's financial loss. May be issued as a condition of return or continued employment in the College.
- Referral: Issued to an employee who has committed a violation of this procedure, and it is determined that continued employment at the College is contingent upon the employee attending designated services or programs. May be issued for a specified time frame or as permanent and may be issued as a condition of return or continued employment at the College.
- Loss of Privileges: Issued to an employee who has committed a violation of this procedure, and it is determined that the employee may continue employment at the College with permanent or temporary limitations on the employee's access to identified services, locations, or College activities.
- No Contact: Issued to an employee who has committed a violation of this procedure, and it is determined that the employee may continue employment at the college with

permanent or temporary limitations on the employees' access to or contact with an identified individual(s) or groups of student and/or staff.

- Disciplinary Probation: Issued to an employee who has committed a violation of this procedure and will face additional sanctions if any additional violations occur during a specified time frame.
- Termination of employment: Permanent termination of employment for an employee who has committed a major, egregious or continued violation(s) of this procedure.
- Other Actions: In addition to or in place of the above sanctions, the College may assign any other sanctions as deemed appropriate.

Generally, sanctions range from a verbal warning to expulsion from the college, based on the offense and the factors noted above in addition to any mitigating, aggravating, and/or compounding factors.

The college retains the right to issue sanctions outside the identified range depending on the individual circumstances.

Students and employees must satisfy all requirements imposed at the time of the sanction to remove the sanction(s).

## **17. Failure to Complete Sanctions**

All responding parties are expected to comply with conduct sanctions within the timeframe specified by the Director of Compliance or, in sex-based harassment allegations involving at least one student party, the administrative law judge. Failure to abide by the sanction(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from Gateway. Supervisors are expected to enforce completion of sanctions for their employees.

## **18. Long-Term Remedies/Actions**

Following the conclusion of the Equity Resolution Procedure and in addition to any sanctions implemented, the Director of Compliance may utilize long-term remedies or actions to stop discrimination, harassment, sex-based harassment or retaliation, remedy their effects on the individual and college community, and prevent their reoccurrence. These remedies/actions may include, but are not limited to:

- Referral to counseling and health services
- Referral to the Employee Assistance Program
- Education to the community
- Permanently altering work arrangements for employees
- Providing campus escorts



- Policy modification
- Implementing long-term contact limitations between the parties
- Offering adjustments to academic deadlines, course schedules, etc.

At the discretion of the Director of Compliance, long-term remedies may also be provided even when the respondent is found not responsible.

## **19. Withdrawal or Separation During Resolution Proceedings**

### **Students**

Should a respondent decide not to participate in the resolution process, the process proceeds absent their participation to a reasonable resolution. Should a student respondent permanently withdraw from Gateway, the resolution process may continue, and any sanction must be completed prior to that student being reinstated. The Registrar's Office will place a hold on a student's account in such circumstances. This hold prevents the student from re-enrolling in any college program.

Regardless of whether the matter is dismissed or pursued to completion of the resolution process, Gateway will continue to address and remedy any systemic issues or concerns that may have contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, discrimination, and/or retaliation. These actions are coordinated by the Director of Compliance, often in collaboration with other college departments. Such exclusion applies to Gateway locations.

### **Employees**

Should an employee respondent resign with unresolved allegations pending, the resolution process may continue, and any sanction must be completed prior to that student being reinstated.

Regardless of whether the matter is dismissed or pursued to completion of the Resolution Process, Gateway will continue to address and remedy any systemic issues or concerns that contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, discrimination, and/or retaliation.

The employee who resigns with unresolved allegations pending is not eligible for rehire with Gateway, and the records retained by the Director of Compliance and Human Resources will reflect that status.

## **20. Appeals**

### **What Can Be Appealed**

- Dismissals of allegations
- Outcome of an investigation or hearing

## Filing an Appeal

Any party may [submit a request for appeal \(“Request for Appeal”\) online](#) within five (5) business days of the receipt of the Outcome Letter. If the individual is unable to submit a request using the online appeal form, the appeal request should be emailed to [compliance@gtc.edu](mailto:compliance@gtc.edu).

## Appeal Review and Disposition

The Director of Compliance will forward the Request for Appeal to the Appeal Decision-maker for consideration to determine if the request meets the grounds for appeal (a Review for Standing). A single Appeal Decisionmaker, who is an investigator not involved with the current resolution process, will review the appeal request.

This initial review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed.

When the Appeal Decisionmaker finds that at least one of the grounds is met by at least one party, additional principles governing the review of appeals include the following:

- Decisions by the Appeal Decisionmaker are to be deferential to the original determination, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is compelling justification to do so.
- Appeals are not a full re-hearing (de novo) of the allegation(s). In most cases, appeals are limited to a review of the written documentation or record of the investigation and pertinent documentation regarding the grounds for appeal.
- An appeal is not an opportunity for the Appeal Decisionmaker to substitute their judgment for that of the original Investigator(s) or Director of Compliance merely because they disagree with the finding and/or sanction(s).
- Appeals granted based on new evidence should normally be remanded (sent back) to the original Investigator(s) for reconsideration. Other appeals should be remanded at the discretion of the Appeal Decisionmaker.

For students: Graduation, study abroad, internships/ externships, etc., do NOT in and of themselves constitute exigent circumstances, and students may not be able to participate in those activities during their appeal.

In rare cases when a procedural or substantive error cannot be cured by the original investigator(s) and/or Director of Compliance (as in cases of bias), the Appeal Decisionmaker may recommend a new investigation, including a new decisionmaker.

The results of a new formal resolution process can be appealed once, on any of the three applicable grounds for appeals. Once an appeal is decided, the outcome is final; further appeals are not permitted, even if a decision or sanction is changed on remand. However, other available processes may still be pursued (e.g. those found in the employee handbook).

In cases in which the appeal results in respondent's reinstatement to the Gateway or resumption of privileges, all reasonable attempts will be made to restore the respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

Once an appeal has been reviewed and a decision rendered, the Director of Compliance will simultaneously notify the parties of the result of the appeal and the rationale for the decision.

Employees have additional appeal rights regarding adverse employment actions that are outlined in Gateway's Employee Handbook. Nothing in this procedure prevents an employee from utilizing those rights upon completion of the resolution process.

## **21. Grounds for Appeal**

Appeals are limited to the following grounds:

- Procedural irregularity that would change the outcome.
- New evidence that would change the outcome and that was not reasonably available when the determination whether discrimination or harassment occurred, or dismissal was made.
- The Director of Compliance, investigator, or decisionmaker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that would change the outcome. If any of the grounds in the Request for Appeal do not meet the grounds in this procedure, then the Appeal Decisionmaker will notify all parties, the Director of Compliance, and, when appropriate, the Investigator(s).

The above three grounds are the only grounds for appeal. The party filing the appeal must cite the specific grounds for appeal and adequately explain the reason for their appeal in their request.

## **22. Statement of the Rights of the Parties**

In addition to the rights of the parties laid out elsewhere in this procedure, both the complainant and the respondent shall have the right to:

- Be informed in advance, when possible, of any public release of information regarding the incident.
- Be treated equitably and with respect by College officials.
- Have College policies and procedures followed without material deviation and transparent to all parties.
- Have reports of sex-based harassment and/or discrimination responded to promptly and with sensitivity by campus officials.
- Be notified in writing of available counseling, mental health, victim advocacy, health, legal assistance, student financial aid, visa and immigration assistance, or other student

services, both on campus and within the larger community and provided a link to Gateway's [Notification of Rights and Options](#).

- Be fully informed of campus policies and procedures as well as the nature and extent of all alleged violations contained within a complaint.
- Be informed of the names of all witnesses whose information will be used to render a finding, in advance of that finding, except in cases where a witness's identity will not be revealed to a party for compelling safety reasons (this does not include the name of the complainant, which will always be revealed).
- Regular updates on the status of the investigation and/or resolution.
- Meetings and/or interviews that are closed to the public.
- Submit a written statement describing the impact of the alleged discrimination/harassment to the civil rights investigator following determination of responsibility, but prior to sanctioning.

In addition, the complainant shall have the right to:

- Not be discouraged by College officials from reporting discrimination and harassment to both on-campus and off-campus authorities.
- Be informed by College officials of options to notify proper law enforcement authorities, including on-campus and local police, and the option to be assisted by campus authorities in notifying such authorities, if the Complainant so chooses. This also includes the right not to be pressured to report, as well.

### **23. Disabilities Accommodation in the Equity Resolution Procedure**

Gateway is committed to providing qualified students, employees or others with disabilities with reasonable accommodations and support needed to ensure equal access to the Equity Resolution Procedure at the College. Students needing such accommodations or support should contact the Director of Compliance, and employees should contact the Director of Compliance, who will review the request and, in consultation with the person requesting the accommodation, and the Director of Compliance, determine which accommodations are appropriate and necessary for full participation.

### **24. Student's Right to Appeal a Removal or Expulsion in Certain Circumstances**

Only in circumstances where 1) the formal resolution procedure has resulted in a finding that a student respondent violated policy H-110 and the sanction includes expulsion, and 2) the allegations were not adjudicated through a hearing process, prior to the implementation of the expulsion, the student may file a written request for a hearing. That request should be made to the Director of Compliance at [compliance@gtc.edu](mailto:compliance@gtc.edu) within five (5) days. Under such circumstances, the matter will proceed to a hearing on the issue of whether a preponderance of the evidence demonstrates that the respondent violated Policy H-110, and if so, what sanctions shall be implemented.

The Wisconsin Division of Hearings and Appeals (DHA) will conduct the hearing, provide notices, and coordinate hearing activity. In general, the DHA will adhere to the following principles:

- At least fourteen (14) calendar days prior to the hearing, or as far in advance as is reasonably possible, DHA will send a letter by at least one of the following methods: in person; mailed to the local or permanent address of the parties as indicated in official College records; or emailed to the parties' College issued email account. The letter will include the following:
  - An indication that the parties may have the assistance of an advisor of their choosing, at the hearing, though the advisor's attendance at the hearing is the responsibility of the respective parties.
  - The time, date and location of the hearing.
  - A copy of the investigation determination, if one is available at the time of the hearing. For good cause, DHA may grant requests to reschedule the hearing date.
- At least seven (7) calendar days prior to the hearing, the parties provide the DHA a list of the names of the proposed witnesses and copies of all proposed documentary evidence. At least five (5) business days prior to the hearing, DHA will have the names of proposed witnesses and copies of all applicable documentary evidence available for the parties.
- DHA in consultation with the parties, the Director of Compliance, and the investigator(s), may decide in advance of the hearing that certain witnesses do not need to be physically present if their testimony can be adequately summarized by the Investigator in the investigation report or during the hearing. All parties will have ample opportunity to present facts and arguments in full and question all present witnesses during the hearing, though formal cross-examination is not used between the parties. If alternative attendance or questioning methods are desired, the parties should request them from DHA at least eight (8) business days prior to the hearing. Gateway will make reasonable accommodations for both parties in keeping with the principles of equity and fairness.

### **Conduct of Hearing**

- DHA shall preside over the hearing, call the hearing to order, ascertain the presence or absence of the Director of Compliance, investigator, and the parties, confirm receipt of the notice of hearing, report any extensions requested or granted, and establish the presence of any Advisors. Formal rules of evidence shall not apply during the hearing.
- Investigator's Report and Testimony: The investigator will first present the written investigative report, if available and applicable, and may give a narrative report of the investigation, and then be subject to questioning by the complainant, the respondent, and DHA administrative law judge. The investigator may also call witnesses who will be subject to questioning by the investigator, the complainant, the respondent and DHA. The investigator may also submit documentary evidence. The investigator(s) may

remain present during the entire hearing process, as determined by the DHA administrative law judge.

- Complainant's Evidence: The complainant may give testimony and be subject to questioning by the Investigator, the respondent (through the DHA administrative law judge) and administrative law judge. The complainant may also call and question witnesses who may also then be questioned by the respondent, the investigator and the DHA administrative law judge. The complainant may also submit documentary evidence.
- Respondent's Evidence: The respondent may give testimony and be subject to questioning by the investigator, the complainant (the DHA administrative law judge) and administrative law judge. The respondent may also call and question witnesses who may also then be questioned by the complainant, the investigator and the DHA administrative law judge. The respondent may also submit documentary evidence.

Additional Rights of the DHA administrative law judge – the DHA administrative law judge shall:

- Determine the relevancy and admissibility of any evidence offered at the hearing.
- Have the authority to exclude a witness proposed by the investigator or the parties if it is determined that his/her testimony would be redundant or not relevant.
- Have the authority to dismiss any person from the hearing who interferes with or obstructs the hearing or fails to abide by the DHA administrative law judge rulings.
- Findings and Sanctions: Following the hearing, DHA administrative law judge shall determine whether a preponderance of the evidence demonstrates that the respondent is responsible for the policy violations in question. If the respondent is found responsible, the DHA administrative law judge shall determine appropriate sanctions. The DHA administrative law judge will prepare a written report detailing the finding and information supporting the finding. If the respondent is found responsible, the report will conclude with the recommended sanctions.
- The DHA findings report shall be delivered to the investigator, the parties, and Director of Compliance within ten (10) calendar days of the hearing. Deviation from this timeline will be communicated to the investigator, Director of Compliance, and the parties. Notification will be made by at least one of the following methods: in person; mailed to the local or permanent address of the parties as indicated in official College records; or emailed to the parties' College issued email account.
- Appeal of Hearing Findings and Sanctions: All requests for appeal consideration must be submitted in writing to the Director of Compliance within ten (10) calendar days of the delivery of the written findings to the appealing party. Any party may appeal the findings and/or sanctions under the grounds described in provision #19 of this procedure except that a different DHA administrative law judge will consider the appeal.

## **25. Revision**

These policies and procedures are reviewed and updated regularly by the Director of Compliance. The College reserves the right to amend this document as necessary and once those changes are posted on Gateway's website and published in MyPolicies, they are in effect. The Director of Compliance may make minor modifications to procedure that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules, etc. The Director of Compliance may also vary procedures materially with notice (on the institutional web site, with appropriate date of effect identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in this procedure and procedure. Procedures in effect at the time of the resolution will apply to resolution of incidents, regardless of when the incident occurred. The procedure in effect at the time of the offense will apply even if the procedure is changed subsequently but prior to resolution, unless the parties' consent to be bound by the current policy and procedure. If government regulations change in a way that impacts this document, this document will be construed to comply with government regulations in their most recent form.