

Formal Resolution Process for Title IX Sexual Harassment

Overview

The Formal Resolution Process for Title IX Sexual Harassment (“Formal Resolution Process”) is used to resolve Formal Title IX Complaints. Unless otherwise noted, capitalized terms in this document have the same definitions and meanings as in the Policy on Title IX Sexual Harassment (“the Policy”).

Dismissal

If the allegations forming the basis of the Formal Title IX Complaint would not, if substantiated, constitute Title IX Sexual Harassment or Retaliation, the Title IX Coordinator shall dismiss the Formal Title IX Complaint from the Formal Resolution Process (“Mandatory Dismissal”). As described in Section XIV of the Policy, the Title IX Coordinator may also voluntarily dismiss complaints in certain circumstances (“Voluntary Dismissal”).

The Title IX Complainant (“Complainant”) and the Title IX Respondent (“Respondent”) may request review of the dismissal, as described in the Request for Review section below. The matter may also be referred by the Title IX Coordinator or a designee to the Policy on Harassment, Discrimination, and Sexual Misconduct and related procedures, or other applicable policies.

Timeline

The Formal Resolution Process is generally concluded within sixty-to-ninety (60-90) business days of the filing of a Formal Title IX Complaint. Any timeframe in the Formal Resolution Process may be extended for good cause by the Title IX Coordinator (or a designee), who will provide notice to the parties, including any reason for the extension, and the amended timeline.

An Advisor of Choice

The Complainant and the Respondent have the opportunity to have others present during any resolution proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney. The University will not limit the choice or presence of an advisor in any meeting or resolution proceeding; however, the University may establish expectations of advisors related to their participation in proceedings, which will apply equally to both parties. The advisor does not

function as an advocate or participate directly in any way during the proceeding with the exception of conducting cross-examination.

If the support person is a lawyer, a representative of the University's Office of Legal Counsel also will attend the hearing. Regardless of whether a complainant, respondent or witness is represented by counsel, at all times they are expected to speak for themselves, directly communicate with the University personnel involved in the investigatory and resolution processes, and submit their own written statements.

If a party does not have an advisor at the hearing, the University will provide, without charge to that party, an advisor to conduct cross-examination on behalf of that party. In such cases, the University will select the advisor, who may or may not be an attorney, and the sole role of the advisor is to conduct cross-examination on behalf of the party.

Initial Outreach

Within five (5) days of the Title IX Coordinator receiving a Formal Title IX Complaint, the Title IX Coordinator or their designee will send the Respondent an Investigation and Allegation Letter ("IAL"). The Complainant will also receive a copy of the letter and will be informed of when it will be delivered to the Respondent.

The investigation and allegation letter will include:

- List of allegations,
- The identities of known involved parties,
- The conduct being reported,
- The date and location of the reported conduct,
- A timeframe for scheduling an initial meeting,
- A copy or link to view the Policy on Title IX Sexual Harassment,
- A statement that the Respondent is presumed to be not responsible for the reported conduct in accordance with Title IX and the Policy,
- A statement that a determination regarding responsibility will be made at the conclusion of the resolution process,
- Information about having an advisor of choice who may be, but is not required to be, an attorney,
- A statement that the University prohibits knowingly making false statements or knowingly submitting false information during the resolution process,
- A statement about the University's policy on retaliation,
- A statement that the parties may inspect and review evidence obtained during the investigation before any hearing,
- The name of the Title IX Investigator(s) and information on how to raise a conflict of interest regarding the investigator, decision-makers, or other personnel involved in the Title IX Resolution Process, and
- Information about confidentiality, as described in the Policy,

- Information regarding the ability to voluntarily request that the matter be resolved through the Informal Resolution Process.

If at any time during the course of the investigation, additional allegations of Title IX Sexual Harassment arise that were not included in the IAL and that will proceed as part of the pending investigation, the Title IX Coordinator or their designee will provide the parties with an amended IAL.

Investigation

The Title IX Coordinator will appoint one or more Title IX Investigator(s) to lead the investigation and conduct fact-finding. Parties whose participation in the Formal Resolution Process is invited or expected, will receive written notice of the date, time, location, participants, and purpose of all investigative interviews and other meetings, with sufficient time to prepare to participate.

The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the University and not on the parties. Regardless of their level of involvement in the investigation, both the Complainant and the Respondent will be able to offer evidence that tends to exonerate or prove the responsibility of the Respondent, and to suggest witnesses on their respective behalves, subject to the limitations set forth in the Policy (*e.g.*, limited use of a party's sexual history as evidence). The Complainant and Respondent should make every effort to include all relevant facts known to them and provide all available supporting materials as part of the investigation.

Typically, witnesses solely providing character information will not be sought or interviewed by the Title IX Investigator(s).

Fact-Gathering

During the fact-gathering, the Title IX Investigator(s) will interview the Complainant and Respondent and will provide both parties with the opportunity to provide evidence and to suggest witnesses. The Title IX Investigator(s) will also request that the Respondent provide a written response to the Formal Title IX Complaint.

At any time during the investigation, the Title IX Investigator(s) may interview witnesses or collect and review evidence.

Investigation Report

Before the investigation report is completed, the Title IX Investigator(s) will provide to each party and their advisor of choice (if requested by the party) any evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Title IX Complaint. This includes evidence upon which the University does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained

from a party or other source. Each party will have at least ten (10) business days to inspect and review the information and submit a written response, which the investigator will include in the investigation report. In the written response, parties may provide additional evidence in response to their inspection and review, may request that certain evidence be omitted from the final investigation report as not relevant, and may respond to any evidence already submitted by the other party.

No less than ten (10) business days prior to a hearing, the final investigation report will be made available to each party and their advisor (if requested by the party), and each party will be given the opportunity to provide a written optional response, addressed to the Title IX Hearing Panel. Any optional response received in the allotted timeframe will be added to the hearing materials.

Resolution

Title IX Hearing Panel

Once the final investigation report is shared with each party, the Title IX Coordinator will refer the matter to a hearing. The determination of whether or not a policy violation occurred, and if so, the imposition of sanctions, is delegated to the Title IX Hearing Panel (“the Panel”).

The Panel is composed of individuals with no previous involvement in the investigation and no known biases or conflicts of interest.

The Panel will apply a preponderance of evidence standard in making its determinations. Namely, the Panel will decide whether, in consideration of all of the information before it, it is more likely than not that the Respondent violated the Policy. If the Panel determines that the Respondent violated the Policy, it may issue sanctions. Panel decisions are made by majority vote.

The Panel may include Decisionmakers (faculty and students drawn from academic divisions and schools at the University and staff representing the academic divisions and schools and/or Campus and Student Life) and a Decisionmaker on Relevance. The Decisionmaker on Relevance may be external to the University and will, among other responsibilities of a Decisionmaker, address matters of relevancy during the hearing. The Panel may also include ex-officio members who are non-voting and serve in an advisory capacity.\

Generally, faculty, students and staff serving on the Panel do not come from the academic unit(s) of either the Complainant or the Respondent.

Student Respondent

In matters involving a student Respondent, the Panel generally consists of 5 Decisionmakers, including 2 faculty members (one who serves as chair), one student, one staff member, and one Decisionmaker on Relevance. The Title IX Coordinator or designee will serve ex-officio (non-voting). A chair and two additional Decisionmakers constitute a three-member quorum.

Faculty, Other Academic Appointee, or Postdoctoral Researcher Respondent

In matters involving a Faculty member, Other Academic Appointee, or Postdoctoral Researcher as a Respondent, the Panel generally consists of 5 Decisionmakers, including 4 faculty members (one who serves as chair), and one Decisionmaker on Relevance. The student ombudsperson will serve ex-officio (non-voting), and the Title IX Coordinator or designee will serve ex-officio (non-voting). A chair and two additional Decisionmakers constitute a three-member quorum.

Staff Respondent

In matters involving a staff respondent the Panel generally consists of 3 Decisionmakers, including 2 staff members (one who serves as chair), and one Decisionmaker on Relevance. One of the three Decisionmakers will serve as the chair of the hearing. The Executive Director of Employee and Labor Relations or their designee will serve ex-officio (non-voting), and the Title IX Coordinator or designee will serve ex-officio (non-voting). A chair and two additional Decisionmakers constitute a three-member quorum.

Conflicts of Interest or Bias

As described in Section IV of the Policy, all Title IX Personnel, which includes members of the Panel, must be free of any conflict of interest or bias for or against the Complainant or Respondent, or for Complainants or Respondents generally, or they should recuse themselves. The Title IX Coordinator will notify the Complainant and the Respondent of the members of the Panel as soon as practicable before the hearing, but no less than ten (10) business days prior to the hearing.

Either party may request a substitution if the participation of any individual on the Panel poses a conflict of interest or if there is a concern of bias. Such requests must be made in writing to the Title IX Coordinator within 2 business days of receiving notice of the members of the Panel. Requests must identify with specificity the alleged nature of the conflict of interest or bias. Based on a review and following the procedures outlined in the Policy, the Title IX Coordinator may remove a Panel member and provide a suitable replacement. Both parties will be notified in writing in the event of a removal or change in the Panel.

Hearing

A live hearing will occur as part of the Formal Resolution Process. The live hearing will comply with the following:

- At the request of either party, the hearing will be held virtually, with parties located in separate rooms with technology enabling the Decisionmaker(s) and parties to simultaneously see and hear the party or witness answering questions. Unless the live hearing is conducted virtually, all parties must be physically present in the same geographic location.

- All hearings will be documented through audio recording, audiovisual recording, or transcript. The University will inform the parties before the hearing about whether it will create an audio or audiovisual recording, or transcript, of the live hearing.
- The hearing chair or Title IX Coordinator (or designee) will answer all questions of procedure.
- Anyone appearing at the hearing to provide information will respond to questions on their own behalf.
- Witnesses will be present at a time determined by the Chair and only for a portion of the hearing in order to answer questions posed by the Panel and the parties.
- The Title IX Investigator(s) will be present for the duration of the hearing.
- Each party may bring an advisor of choice to the hearing.
- Each party will only directly address the Panel.
- The Panel may allow each party up to eight (8) minutes to provide an opening statement.
- The Panel may allow each party up to eight (8) minutes to provide a closing statement.

The Panel chair may, for good cause, adjust the general format of the hearing with prior notification to all the parties.

Questioning

At the hearing, the Complainant, Respondent, and third-party witnesses will submit to questioning by the Panel, starting with the Complainant and continuing in the order determined by the chair. After the Panel finishes questioning a particular party or witness (or decides not to ask any questions to that party or witness), each party may question the party/witness (cross-examination). After cross-examination is finished, the Panel will call the next party/witness to submit to questioning; provided that the Panel may ask additional questions to any party or witness at any time prior to the completion of the hearing.

Cross-examination must be conducted by the party's advisor of choice, and never by the party. The advisor of choice, who must remain seated during questioning, will pose a question, then allow for the Decisionmaker on Relevance to determine if the question is relevant before it is answered.

The Panel cannot draw an inference about the determination regarding responsibility based solely on the party or witness's absence or refusal to answer cross-examination or other questions.

Assessing Relevance of Cross-Examination Questions

All questions that each party's advisor asks to the other party and any witnesses are subject to a relevance determination by the Decisionmaker on Relevance, and only questions deemed to be relevant by the Decisionmaker on Relevance will be allowed. The Decisionmaker on Relevance may allow either party's advisor to explain how a question is relevant or not relevant, prior to determining if the question will be allowed or prohibited. The Decisionmaker on Relevance will state for the record the decision of relevance and will instruct individuals to answer questions

accordingly. If a question is deemed not relevant, the Decisionmaker on Relevance will provide an explanation for that decision. This provision does not require the Decisionmaker on Relevance to give a lengthy or complicated explanation.

The Decisionmaker on Relevance may not exclude relevant evidence because it may be unduly prejudicial, concern prior bad acts, or constitute character evidence. Where, for example, a cross-examination question or piece of evidence is relevant, but concerns a party's character or prior bad acts, the Decisionmaker on Relevance cannot exclude or refuse to consider the evidence, but the Panel may proceed to objectively evaluate that relevant evidence by analyzing whether that evidence warrants a high or low level of weight or credibility, so long as the Panel's evaluation treats both parties equally.

As described in Policy Section XVI, the following types of evidence are not relevant or otherwise not subject to use in a hearing under the Policy: (i) information protected by a legally recognized privilege, unless waived, (ii) evidence about a complainant's prior sexual history (subject to the exceptions below), (iii) any party's medical, psychological, and similar records unless the party has given voluntary, written consent, and (iv) party or witness statements that have not been subjected to cross-examination at a live hearing.

- With respect to (ii) above, questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence are offered to prove that someone other than the Respondent committed the reported conduct, or it addresses the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove Consent.
- With respect to (iv) above, if a party or witness does not submit to cross-examination at the hearing, the Panel cannot rely on any oral or written statement of that party or witness in reaching a determination regarding responsibility.

Additionally, the Decisionmaker on Relevance will prohibit questions that are not probative of any material fact concerning the allegations, repetitive, or abusive. The decision of relevance by the Decisionmaker on Relevance is final and not subject to discussion once stated.

Outcome

Within ten (10) business days of the conclusion of the hearing, the Panel will provide a written decision, simultaneously to each party. The decision letter will include:

- The identification of the allegations potentially constituting Title IX Sexual Harassment as defined in the Policy and the specific provisions reported to have been violated,
- A description of the procedural steps taken from the receipt of the Formal Title IX Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held,
- Findings on each alleged Policy violation,
- Findings of fact supporting the determination,
- Conclusions regarding the application of the relevant Policy to the facts,

- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility,
- Any disciplinary sanctions the University will impose on the Respondent,
- Any remedies designed to restore or preserve equal access to the University's education program or activity that will be provided by the University to the Complainant, to the extent the University is permitted to share such information under state and federal law (this information is only typically shared when the remedy directly relates to the Respondent), and
- The University's procedures and permissible bases for requesting a review.

Review Process

Request for Review

Within ten (10) days of being informed, in writing, of the decision of the Title IX Hearing Panel, the Complainant and Respondent may request a review of the outcome and any sanctions. The request must be in writing and the only recognized grounds are: (i) a procedural irregularity that affected the outcome of the matter; (ii) 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; (iii) the Title IX Coordinator, Title IX Investigator(s), or Decisionmaker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter; or (iv) the sanction is disproportionate to the violation.

Requests for review and any supporting material should be submitted in writing, clearly state the basis for the request (i.e., one of the recognized grounds above), and include materials that directly support the Complainant's or Respondent's claim(s). Character references should not be submitted and will not be considered.

The Complainant and/or the Respondent will be informed in writing if the other party has submitted a request for review. If the request for review meets the standards for a review, the Complainant's and/or Respondent's request for review will be made available to the other party, who will have five (5) business days to submit an optional response statement. Requests for review and/or supporting materials must be prepared and/or submitted by the Complainant or Respondent, *i.e.*, materials prepared or arguments advanced by other individuals (*e.g.*, an advisor) will not be considered.

In making a decision, the Review Decisionmaker(s) do not conduct a new disciplinary proceeding and normally do not interview witnesses or seek additional information from the person seeking review or witnesses, although the Review Decisionmaker(s) have the authority to do so and may also seek additional information regarding the proceeding from sources that include but are not limited to: the Hearing Panel chair, other Decisionmakers, and/or the Title IX Coordinator. The Review Decisionmaker(s), acting on the basis of the entire record, may sustain, reduce, increase, strike or otherwise modify the sanctions imposed upon finding (i), (ii), (iii) and/or (iv) above. If the Review Decisionmaker(s) finds in favor of the party that submitted the

request for review, it may also require a quorum of the Title IX Hearing Panel to reconvene and consider new information in the proceedings.

The Complainant and the Respondent shall be notified formally, in writing, of the outcome of the request for review within seven (7) business days after the conclusion of the review. The review constitutes the final process, and the outcome is final and not reviewable within the University.

Review Decisionmaker(s) for student respondents

The Dean of Students in the University (or designee) determines whether a request meets the criteria for a review. The Dean of Students in the University will convene a Review Board for requests that meet the criteria. A Review Board will be convened as soon as is practicable but not before the deadline for submitting a request for review. When both the Complainant and Respondent submit requests for review and there is a determination that both meet one or more of the criteria for convening a Review Board, the Dean of Students in the University will decide whether the dual requests should be considered by separate Review Boards or by a single Review Board.

The Review Board consists of the Dean of Students in the University (or designee), one faculty member, who serves as Chair, and one student member. The faculty and student members are both appointed by the Dean of Students in the University (or designee) and none shall be involved in the process that rendered the decision under review. All members of the Review Board must be able to maintain independent judgment and discharge their obligations in a fair-minded fashion, free from material bias and conflicts of interest, or they should recuse themselves.

As soon as practicable before the review hearing, the Dean of Students in the University (or designee) will notify the Respondent and Title IX Complaint of names and academic affiliation of Review Board members. The Respondent and Complainant may request a replacement for any member of the Review Board on the grounds that such member has a material conflict of interest. Such requests must be made to the Dean of Students in the University (or designee) within two (2) business days of receiving notice of the identities of the Review Board members. Requests must identify with specificity the alleged nature of the conflict of interest. Using reasoned judgment, the Dean of Students in the University (or designee) will decide whether the alleged conflict is genuine and material and, if so, whether it compels the Review Board member's replacement.

Review Decisionmaker for matters involving a Faculty, Other Academic Appointee, or Postdoctoral Researcher respondents

The Provost serves as the Review Decisionmaker for matters involving Faculty, Other Academic Appointees, or Postdoctoral Researchers respondents. Unless the Respondent is an appointee under Statute 11.1 and the sanction is termination of appointment/employment, the Provost's decision is final and unreviewable within the University. If the Respondent is appointed under Statute 11.1 and the Provost has decided to impose the sanction of termination of employment, then the matter will next proceed under the process set forth in Statute 11.4.

Review Decisionmaker for matters involving staff respondents

The Associate Vice President for Human Resources serves as the Review Decisionmaker for matters involving staff respondents.

Process effective: August 14, 2020