

# Title IX Grievance Procedures

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## Introduction

These grievance procedures implement the University's Title IX Policy.

All individuals responsible for implementing these grievance procedures must be free from bias or conflict of interest.

### I. Privacy and Confidentiality

*Privacy* - The University is committed to protecting the privacy of all individuals involved in a reported sexual offense. Information related to a report of an offense, aside from information disclosed to persons in legally protected roles (i.e., professional mental health counselors, licensed physicians, clergy when the communication is made in their professional capacity of giving religious or spiritual advice, and appropriately licensed rape crisis/sexual assault counselors) will only be shared with individuals whose duties require access to such information. No other persons will receive any information related to the report or investigation absent a valid subpoena or court order.

*Confidentiality* - The University also recognizes that a party may desire confidentiality and may not want the University to investigate or attempt to resolve the incident. While the University will make every reasonable effort to honor such requests for confidentiality, the University must balance this request against its responsibility to protect the community. The University reserves the right to investigate and to take whatever steps are necessary to ensure a safe and nondiscriminatory environment for all students and employees. When the University cannot comply with a party's request for confidentiality, the University will consult with that individual and keep them informed throughout the process.

### II. Jurisdiction of the University Over Individuals

The University has jurisdiction over a Title IX matter if a complainant is participating in or attempting to participate in the education program or activity of the University. The University has jurisdiction over a respondent only if they are enrolled or employed at the University.

*Student Withdrawal/Leave of Absence* - If a student complainant takes academic leave or a term withdrawal with an express intention to register for courses as usual at the end of the leave period or beginning of the next semester, respectively, a pending Title IX matter may remain open at the University's discretion. If a student complainant permanently withdraws during a pending Title IX matter it will be dismissed.

### **III. Procedural Actions**

#### **Emergency Removal**

The University may remove any person from its education program or activities on an emergency basis after undertaking an individualized safety and risk analysis and determining that an immediate threat to the physical health or safety of any student or other individual exists. In such a situation, the University will provide the person with notice and an opportunity to challenge the decision immediately following the removal. The University also reserves the right to place an employee on administrative leave while the investigation and/or grievance procedures are pending.

If a Title IX report establishes an immediate threat to the campus community, the University shall issue a timely notice of the incident in the interests of the health and safety of the campus community.

#### **Dismissal of Complaint**

If the conduct alleged in the formal complaint would not constitute sexual harassment even if proved, did not occur in the University's education program or activity, or did not occur against a person in the United States, then the Title IX Coordinator will dismiss the formal complaint; such a dismissal does not preclude action under another University policy, including the applicable Sexual Offenses Policy (Students or Employees) or provision of the Student Code of Conduct.

The Title IX Coordinator may dismiss the formal complaint or any allegations therein, if at any time during the investigation, hearing, appeal, or post-appeal, a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein, the complainant has permanently withdrawn or discontinued employment with the University, the respondent is no longer enrolled or employed by the University; or specific circumstances prevent the University from gathering, evaluating, or hearing evidence sufficient to reach a determination regarding the formal complaint or allegations. Upon dismissal of a

complaint the Title IX Coordinator will promptly and simultaneously send written notice to the parties.

A party may appeal a dismissal by following the process outlined later in these procedures.

### **Written Notice**

After a complaint is filed, the Title IX Coordinator will notify the parties of the following information in writing:

The identities of the parties involved in the incident, if known.

The conduct allegedly constituting sexual harassment.

The date and location of the alleged incident, if known.

A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.

The parties may have an advisor of their choice, who may be, but is not required to be, an attorney.

The parties may inspect and review evidence.

The provision of the University's Code of Student Conduct or Code of Conduct for Staff and Faculty that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

If the scope of an investigation expands beyond the conduct initially alleged, the investigator or Title IX Coordinator will give written notice to the parties.

### **Consolidation**

The University may consolidate formal complaints of sexual harassment 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 harassment arise out of the same facts or circumstances.

### **Procedure Under Other Policies**

If allegations are not covered by Title IX, the University may elect to bring charges under its Codes of Conduct and other policies. For example, if the respondent is a student, the [Sexual Offenses Policy for Students](#) and its accompanying [Grievance](#)

[Procedures](#) may apply. Similarly, if the respondent is an employee, the [Sexual Offenses Policy for Employees and Third Parties](#), and its accompanying [Grievance Procedures](#) may apply. If some of the allegations would be covered by Title IX and some would not, only the allegations covered by Title IX would be resolved by the Title IX Grievance procedures.

#### **IV. Investigation**

The University will investigate when a complaint of sexual offenses has been made to the University or when the University determines that a reported sexual offense requires further review. Investigations will be conducted by qualified professionals who have received appropriate training. The University may delay temporarily the fact-finding portion of an investigation in cases that are actively under investigation by off-campus law enforcement. In these cases, the University generally will not conduct independent interviews or gather evidence while off-campus law enforcement is actively interviewing witnesses or gathering evidence on the matter that concerns the University. The University may proceed with an investigation in such cases where necessary to protect students or other members of the University community, after weighing all factors, including the views of off-campus law enforcement.

##### **Privileged records**

The University will not access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the University obtains that party's voluntary, written consent to do so or a party has waived the privilege by words or actions, including by providing privileged materials to the University in connection with a Title IX matter or seeking to use such materials to support allegations or as a defense to allegations.

##### **Advisors**

Either party may 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 advisor may not be a witness. Otherwise, the University will not limit the choice or presence of advisors for any interview, meeting, or grievance proceeding. However, advisors may not speak except to request a break. If an advisor violates this rule, the advisor will be warned. If an advisor violates the rule for a second time, the investigator may remove the advisor.

## **Notice of Interviews, Meetings, and Hearings**

The University will provide parties advance notice of requests for interviews, meetings, and hearings with sufficient time to prepare. The University will provide to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of the interview, meeting, or hearing.

## **Role of Parents**

If a party is a minor, a parent or guardian may act on behalf of the child in the process, including filing a complaint. If the party is not a minor, parents may report an alleged violation but may not file a complaint on behalf of their child. Parents whose child signs a waiver under the Family Educational Rights Privacy Act (FERPA) may communicate with University administrators directly. However, parents may not talk during interviews or hearings. A parent may serve as the designated advisor of a party and conduct cross-examination at a hearing. A parent who is a witness may not serve as an advisor or be present at a hearing during any portion except their testimony. If the Hearing Board Coordinator determines that the presence of a non-witness parent at a hearing may be prejudicial to a party, the parent may be excluded from the hearing room but be permitted to view the proceeding via a video feed.

## **Estimated Timelines for Formal Process**

The University will conduct a prompt and equitable investigation into Title IX complaints. The investigation will be conducted by trained individuals who have no actual bias or conflict of interest. Good faith efforts will be made to resolve formal complaints in a timely manner, typically within 75 business days. The University may extend any timeframes noted in these procedures for good cause for reasons 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. If the University will not meet a timeframe, it will notify the parties in writing and include the reason for the action.

## **Witnesses and Evidence**

The parties will receive equal opportunity to present witnesses, including fact, character, and expert witnesses, and other inculpatory and exculpatory evidence. The University will not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence. However, a party's communication with a witness that is obstructive, intimidating, or interferes with the

grievance process is not permitted and subject to discipline. The University will provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint. The University will also provide evidence it does not intend to rely upon in reaching a determination regarding responsibility as well as inculpatory or exculpatory evidence whether obtained from a party or other source. In addition, the University will make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination. The University will take reasonable steps to prevent the disclosure of sensitive or confidential information. The University will not permit the introduction of any prejudicial or inflammatory evidence at any hearing.

Prior to completion of the investigative report, the University will send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format. The parties will have 10 business days to submit written comments, which the investigator will consider prior to completion of the investigative report.

### **Investigative Report**

The Investigator will write a report that fairly summarizes relevant evidence and send the report in electronic format to the parties and their advisors (if any) at least 10 business days prior to a hearing for their review. Each party may provide a written response to the report prior to the hearing. The investigator cannot make a decision regarding responsibility. The investigator can make credibility assessments, but those assessments cannot become determinations of responsibility.

## **V. Alternative Resolution**

Some allegations of sexual offenses may be resolved by alternative resolution. The Title IX Coordinator and/or Dean will determine if alternative resolution is an option.

Alternative resolution is generally not available for situations involving violence, nor is it available for allegations of sexual assault that involve penetration without consent.

Alternative resolution will not be used if the complainant is a student and the accused/respondent was acting as a University employee at the time of the alleged violation. This process will be managed by the Dean of Students Office in matters where both parties are students. Where both parties are employees the process will be managed by the Title IX Coordinator. The availability of this process is not intended to discourage anyone from filing a formal complaint. The process is only available when

both the complainant and the respondent voluntarily agree to it in writing. Either party who has agreed to alternative resolution does not waive their right to a formal process and may return to a formal process at any time before a resolution is reached. A resolution of the matter occurs when both parties expressly agree to an outcome (which may include disciplinary measures for the accused/respondent) that is also acceptable to the Dean where the parties are students. In matters involving faculty or employees the outcome must be acceptable to the Provost or Chief Human Resource Office, respectively. If a matter is resolved by alternative resolution, the Title IX Coordinator will close the case, which cannot be re-opened unless the terms of the agreement are violated or new compelling evidence is discovered.

## **VI. Hearings**

Formal rules of process, procedure, and technical rules of evidence, such as applied in criminal or civil court, will not be used in Title IX hearings. Deviations from prescribed procedures shall not necessarily invalidate a decision, unless significant prejudice to a complainant, respondent or the University results. Because a hearing is a fact-finding proceeding and does not recommend or adjudicate punishments, the Title IX Coordinator may decide to forgo a hearing if the respondent accepts responsibility and forward the case to the appropriate individual for determining sanctions. This acceptance must be in writing, affirming acceptance of responsibility for the charge(s) and acknowledging that the full range of sanctions may be imposed. A respondent who accepts responsibility in writing forfeits all rights to an appeal process.

### **Scheduling of Hearing**

The complainant and respondent shall receive at least seven business days written notice of the specific allegations and the date, time, and location of the scheduled proceeding and their rights as outlined in these procedures. The notice will also include the purpose of the hearing and expected participants. Generally, once scheduled, a hearing will not be delayed unless due to a serious documented illness of a party or advisor, the introduction of new evidence, or University closing.

### **Hearing Coordinator**

A hearing coordinator will administer the hearing process. Both the complainant and the respondent will be offered the opportunity to meet with the hearing coordinator. Each party should schedule their meeting at least five business days before the hearing.

## **Witnesses**

Both parties may provide the names of witnesses from the University community who have relevant and material information pertaining to the incident, as well as character or expert witnesses. Any additional witnesses must be submitted to the hearing coordinator in writing at least three business days prior to the proceeding. The University may also invite witnesses.

## **Character Witnesses**

While character witnesses are permitted they are not required. The Hearing Board may not draw an adverse inference against a party who does not present a character witness at a hearing.

## **Role of Advisor in Hearings**

The University will conduct live hearings. Advisors may not speak at the hearing except to ask the other party and any witnesses relevant questions, including those challenging credibility. Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor and never by a party personally. An advisor may submit requests in writing to the chair of the hearing board, may pass notes to their advisee, or may request a break to consult with their advisee. An advisor whose behavior does not meet the rules of decorum at the hearing will be warned. If the behavior continues, the advisor can be removed.

## **Appointment of Advisor**

Whether or not a party chooses to participate in the hearing, if a party does not have an advisor of choice for the live hearing, the University will provide one at no fee to conduct cross-examination on behalf of that party. The appointed advisor does not need to be an attorney.

## **Use of Technology**

At the request of either party, the live hearing may occur with one or both of the parties choosing to be located in a separate room from the hearing board with technology enabling the board and parties to simultaneously see and hear the parties or witnesses answering questions. Live hearings may be conducted with all parties physically present in the same geographic location or the University may elect to hold them virtually with technology enabling participants simultaneously to see and hear each other.



The University will make audio or audiovisual recordings of all live Title IX hearings. Other individuals at these proceedings are prohibited from making their own recordings. When the University is not recording a meeting or proceeding, individuals who wish to make their own recording must expressly request permission from the University to do so. The University will make its recordings available for inspection and review by the parties. Individuals may watch or listen to recordings but may not duplicate them.

### **Rules of Cross-Examination**

Only relevant cross examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question during the hearing, the hearing board chair must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. The chair's decision on relevance is final and may not be challenged by a party or advisor. Questions that are inflammatory or prejudicial are not permitted. Hearings will not follow legal rules of evidence.

### **Evidence of Prior Sexual Behavior and Mental Health**

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, 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. In addition, testimony or evidence regarding any party's mental health will not be permitted absent written authorization prior to the hearing from the hearing coordinator.

### **Refusal to Submit to Cross-Examination**

If a party or witness does not submit to cross-examination at the live hearing, the hearing board cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions. The hearing board may rely on statements made by a party or witnesses who do not submit to cross-examination at the hearing so long as the statements are reliable and relevant. Such statements may include, but are not limited to, statements in police reports or other official reports, investigative interviews, medical records, court records and filings, emails, written statements, affidavits, text messages, and social media postings. The hearing board will

determine the appropriate weight to afford the statements under the circumstances and will do so in a fair and equitable manner.

### **Hearing Agenda**

The hearing agenda is normally as follows, although the chair of the board may make reasonable alterations as necessary to ensure a prompt, thorough, and equitable hearing for all parties:

The chair reads instructions and procedures to the parties and witnesses, and reviews the alleged violation(s).

The complainant may make an opening statement. The statement should be no more than ten minutes in length and address the facts surrounding the alleged offense. The board will then ask the complainant questions. After the board has concluded asking questions, the respondent's advisor may cross-examine the complainant. The board may ask additional questions following the cross examination.

The respondent may make an opening statement. The statement should be no more than ten minutes in length and address the facts surrounding the alleged offense. The board will then ask the respondent questions. After the hearing board has concluded asking questions, the complainant's advisor may cross-examine the respondent. The board may ask additional questions following the cross examination.

Invited witnesses may provide statements. After each witness statement, the board will then ask that witness questions. After the board has concluded asking questions, advisors for each party may question the witness. The board may ask additional questions following the cross examination.

The complainant may make a closing statement. The statement should be no more than ten minutes in length. The board may then ask the complainant questions. After the board has concluded asking questions, the respondent's advisor may question the complainant. The board may ask additional questions following the cross examination.

The respondent may make a closing statement. The statement should be no more than ten minutes in length. The board may then ask the respondent questions. After the board has concluded asking questions, the complainant's advisor may ask the respondent questions. The board may ask additional questions following the cross examination.

The chair concludes the proceeding and the board deliberates in private.

## **Determination of Responsibility**

The hearing board, which cannot include the Title IX Coordinator or the investigator, will issue a written determination regarding responsibility using the preponderance of the evidence standard. Preponderance of the evidence means that a greater weight of evidence supports the conclusion that a fact is true, or to establish that an event occurred. A preponderance of the evidence does not necessarily mean the greater amount of evidence but rather the greater quality of evidence – making it more likely than not that the matter in question is true.

If the hearing board determines that the respondent is responsible, the board shall provide a draft of the written determination to:

- the Dean of Students ( if the respondent is a student) who will determine a sanction.
- to the Provost or Chief Human Resource Officer (if the respondent is a faculty member or employee respectively) to determine a sanction.

If the respondent serves multiple roles (e.g. is both a student and an employee), the Title IX Coordinator will decide who should determine the appropriate sanction.

The written determination will include the following:

- Identification of the allegations potentially constituting sexual harassment.
- A description of the procedural steps taken from the receipt of the formal 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 of fact supporting the determination.
- Conclusions regarding the application of the University's code of conduct 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 imposes on the respondent, and whether remedies designed to restore or preserve equal access to the University's education program or activity will be provided by the University to the complainant.
- The University's procedures and permissible bases for the complainant and respondent to appeal.

The University will provide the written determination to the parties simultaneously.

The determination regarding responsibility becomes final either on the date that the University provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely. The Title IX Coordinator is responsible for overseeing effective implementation of any remedies.

### **Potential Range of Sanctions**

If a respondent is found to have violated Title IX, it will impose sanctions commensurate with the violation. Potential sanctions include, but are not limited to, one or more of the following:

Probation

Written warning

Demotion or pay cuts (for employees)

Restrictions on access to University programs or areas

Suspension

Transcript notation (for students)

Expulsion (for students)

Termination of employment

Revocation of faculty tenure (under the procedures of the Faculty Handbook)

Discretionary Sanctions: Other sanctions that bear a reasonable relationship to the violation for which the respondent has been sanctioned may be imposed instead of or in addition to those specified above. Discretionary sanctions include, but are not limited to: service hours, fines, educational reflection assignments, and participation in alcohol or drug awareness programs, and training, counseling, and education regarding sexual offenses.

## **VII. Appeals**

Either party may appeal a dismissal of the complaint or a finding by the hearing board by sending a letter to the Chief of Staff within five business days of receipt of the dismissal notice or the outcome of the hearing board's decision. A party adjudicated in absentia forfeits all rights to an appeal process unless it is proven that it is for lack of

proper notice, except in an extraordinary circumstance. The appeal must specify grounds that would justify consideration. General dissatisfaction with the dismissal or outcome of the proceeding or an appeal for mercy are not appropriate grounds for appeal. The written appeal must specifically address at least one of the following criteria:

A. Procedural irregularity that affected the outcome of the matter.

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. Evidence showing a Title IX Coordinator, investigator, or decision-maker 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.

The University will notify the other party in writing when an appeal is filed and allow that party five business days to send a letter to the Chief of Staff supporting the dismissal or outcome of the hearing board. The Chief of Staff may consult other University officials as appropriate before making his/her decision, but shall not gather additional evidence or speak to any of the individuals who provided evidence or testimony at the hearing. If the Chief of Staff believes that new evidence, previously unknown to either party, or procedural irregularity, or conflict of interest or bias, significantly alters the finding of fact, the Chief of Staff may return the case to the board or, at his/her sole discretion, a board with some or all new members, for a hearing. Such a hearing shall occur in the presence of the complainant and respondent and follow all of the procedural rules of a regular hearing. The Chief of Staff may not return the case to the board only for the purpose of reconsidering its original decision.

The decision on the appeal is final and shall be conveyed in writing to both parties, normally within 10 business days of receipt of the response from the party opposing the appeal. The decision will describe the rationale for the appeal outcome. Both parties will receive the written appeal decision simultaneously. Sanctions are not appealable and may only be altered if a finding of responsibility is overturned.

## **VIII. Impact of Change in Law**

If a portion of the Title IX of the Education Amendments of 1972 or its implementing regulations is stayed, held invalid by a court of law, withdrawn, or deemed unenforceable, the relevant portion(s) of the University's Title IX Policy and Procedures

will be reviewed by the Title IX Committee to determine whether the government or court action is applicable and controlling such that the policy or procedure should be deemed revoked as of the publication date of the opinion, order, decision, guidance, or other communication.

In the event a case cannot proceed under the Title IX process due to a revocation of any portion of the University's Title IX Policies or Procedures, the case may still be investigated and adjudicated under the University's existing policies and grievance procedures for conduct not covered by Title IX, based upon the procedures in effect at the time of the hearing and the policy that was in effect at the time of the offense.