



APPENDIX G
PROCEDURES FOR TITLE IX SEXUAL HARASSMENT¹
EFFECTIVE AUGUST 14, 2020

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A. Notice of Allegations

Following receipt of a Formal Complaint, OIE simultaneously will provide written notice to each known party (Complainant(s) and Respondent(s)) that will include the following:

- Notice of these Procedures for Title IX Sexual Harassment, including the informal resolution process and a range of possible sanctions associated with the allegations;
- Notice of the allegations of Title IX Sexual Harassment, including: the identities of the parties involved in the incident, if known; the conduct alleged to constitute Title IX Sexual Harassment; the date, time, and location of the alleged incident(s), 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 any investigation and adjudication process;
- Information regarding the parties' right to a supporter of choice (including an attorney or advocate) and a hearing advisor in the event of a live hearing; and

¹ The Procedures for Title IX Sexual Harassment will be utilized for applicable matters reported to the Office of Institutional Equity ("OIE") on or after August 14, 2020 where the allegations of Title IX Sexual Harassment allegedly occurred on or after August 14, 2020. For any matters reported to OIE prior to August 14, 2020, or which concern allegations of Title IX Sexual Harassment that allegedly occurred prior to August 14, 2020, OIE will apply the policy and procedures that were in effect until August 14, 2020.

- A statement describing applicable prohibitions against knowingly making false statements or submitting false information during any investigation, adjudication, or informal resolution process.

The Title IX Coordinator or a designee reserves the right to amend or supplement the Notice of Allegations at any time. If, in the course of an investigation, OIE decides to investigate new or additional allegations that were not included in the most current Notice of Allegations, OIE will provide an updated Notice of Allegations to all known parties.

The Title IX Coordinator or a designee also will provide the Complainant and Respondent, respectively, a written explanation of their rights, options, and responsibilities under these Procedures, including the availability of interim supportive measures and support resources, information regarding other civil and criminal options, and legal services organizations and referral services available to the party.

B. Discretionary Dismissal

The Title IX Coordinator has discretion to dismiss a Formal Complaint of Title IX Sexual Harassment or any allegations within such a Formal Complaint in the following three situations:

- The Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations within it;
- The Respondent is no longer enrolled at the University or is no longer employed by the University; or
- Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

If any of these circumstances is present, the Title IX Coordinator will make a fact-specific determination whether to dismiss the Formal Complaint, considering all relevant circumstances, including the safety and security of the University community. In the event of a discretionary dismissal, both parties will be notified simultaneously and in writing of the dismissal and reasons therefore. Both parties have the right to appeal the dismissal of a Formal Complaint. See Section H.

C. Mandatory Dismissal

Even if a preliminary determination is made that alleged misconduct in a Formal Complaint triggers the Procedures for Title IX Sexual Harassment, as described in Section IX of the Sexual Misconduct Policy, throughout the investigation and adjudication process it may become apparent that some or all of the alleged misconduct does not meet the requirements of Title IX Sexual Harassment. In that case, the University must dismiss the Formal Complaint (or the allegations within the Formal Complaint that do not meet the Title IX Sexual Harassment requirements), but it retains the discretion to address the alleged misconduct as Other Sexual Misconduct under the Sexual Misconduct Policy or under other policies, including the Student Conduct Code.

D. Informal Resolution of Formal Complaint

At any time prior to reaching a determination regarding a Formal Complaint of Title IX Sexual Harassment, the Title IX Coordinator or designee may facilitate an informal resolution process (such as mediation) that does not involve a full investigation and adjudication, if the following circumstances are met:

- The parties each receive a written notice disclosing the allegations and the requirements of the

- informal resolution process;
- The parties each provide voluntary, written consent to participating in the informal resolution process; and
- The Formal Complaint does *not* allege that a University employee engaged in Title IX Sexual Harassment of a student.

If the parties agree to engage in the informal resolution process, either party may withdraw from that process at any time prior to agreeing to a resolution of the Formal Complaint. If either party decides to withdraw, the investigation and adjudication process for the Formal Complaint will resume.

If, through the informal resolution process, the parties agree to a resolution of the Formal Complaint, the party's agreement will be confirmed in writing, the Formal Complaint will be closed, and the parties may no longer resume the investigation and adjudication process on the same allegations. However, an Informal Resolution does not prevent either party from reporting new allegations that were not part of a Formal Complaint that was informally resolved.

E. Investigation of Formal Complaint

1. Consolidation of Formal Complaints

The Title IX Coordinator or designee may consolidate Formal Complaints as to allegations 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.

2. Fact Gathering

During the first phase of its investigation, the University will gather facts related to the allegations of Title IX Sexual Harassment. The Title IX Coordinator will designate one or more trained internal or external investigators to interview the Complainant, Respondent, and witnesses. The Title IX Coordinator may serve as an investigator. Investigators will gather pertinent documents and other evidence identified by either party or that comes to their attention.

The burden of proof and of gathering evidence sufficient to reach a determination regarding responsibility rests on the University and not on the parties.

Parties have the right to submit evidence (both inculpatory and exculpatory), present witnesses (including fact and expert witnesses), and/or suggest specific questions to be posed to the other party during the investigation.

3. Investigative Protocols

The investigators will follow the protocols set forth below:

- **Preservation of Evidence:** The investigators will request that the Complainant, Respondent, witnesses, and other interested individuals preserve any relevant evidence, including documents, text messages, voice messages, e-mails, and postings on social media.
- **Romantic or Sexual History:**
 - The investigators will not solicit or consider information about the

Complainant's sexual predisposition or prior sexual behavior, unless such information is offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the information concerns specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and is offered to prove consent.

- Investigators will not solicit or consider information concerning the romantic or sexual history of the Respondent other than 1) information concerning the parties' shared romantic or sexual history that is offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant; 2) information concerning specific incidents of the Respondent's prior sexual behavior with respect to the Complainant that is offered to prove consent; or 3) information concerning the Respondent's prior sexual history with someone other than the Complainant if deemed relevant to prove the source of injury or prior sexual misconduct, to show that an individual has an ulterior motive, or to impeach the Respondent's credibility after the Respondent has put their own prior sexual conduct at issue.
- **Prior Conduct Violations:** The investigators will generally not consider evidence of any prior incident, but the investigators have discretion to consider evidence of any prior incident(s) that involved conduct substantially similar to the allegation(s) being investigated or demonstrates a common pattern of behavior.
- **Mental Health Conditions:** The investigators will not solicit or consider information concerning a party's mental health history, including any mental health diagnosis, counseling, or treatment, unless the party consents to the use of such information.
- **Medical Records:** The investigators cannot 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 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.
- **Law Enforcement Investigations:** If the University's investigation is delayed during the evidence-gathering stage of a concurrent law enforcement investigation, the University's investigation will resume promptly thereafter.

4. Party Review of Evidence File

After the fact-gathering process is complete, both parties will have an equal opportunity to review the evidence file, which includes any evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint. This includes evidence upon which the OIE investigator does not intend to rely in reaching a recommendation regarding responsibility as well as inculpatory and exculpatory evidence obtained from a party or other source.

Prior to the completion of the Investigative Report, OIE will provide each party and their supporter(s) (if applicable) with electronic access to review and inspect the above-referenced evidence file. The parties will have 10 calendar days to submit a written response to OIE, if they choose. If either or both parties submit a response to the evidence file, the assigned investigator(s) will consider the response(s) prior to completing the Investigative Report.

Any response to the evidence file submitted by a party will be made available to the other party and their supporter(s), and will become part of the evidence file unless the response is not directly related to the

allegations raised in the Formal Complaint.

The evidence file will be made available to the parties and the members of the determination panel for reference during a hearing, including for purposes of cross-examination.

5. Investigative Report

Upon completion of the fact-gathering process and with consideration of any response to the evidence file review, the investigator(s) will consider all relevant evidence and prepare a report that fairly summarizes relevant evidence. The report will include the investigator's recommended findings of fact, an assessment of credibility of the information provided, and a recommended determination as to whether the Respondent is responsible for the alleged violation(s) by a preponderance of the evidence.

At least 10 days prior to the hearing, the Complainant and Respondent will be notified in writing of their right to review the investigative report and submit written comments to the determination panel. If either party chooses to submit written comments to the determination panel, these comments will be provided in full to the other party along with OIE's final investigative report.

When the investigative report is submitted to the parties, the names and identifying information of other students/individuals will be redacted to the extent required by FERPA and to protect other privileged and confidential information. Once the Title IX Coordinator or investigator determines that an investigation is complete, the Title IX Coordinator or investigator will transmit the investigative report and the evidence file to the appropriate determination panel.

F. Live Hearing

Unless a Formal Complaint is dismissed or resolved via the informal resolution process, the University will provide for a live hearing presided over by a trained determination panel.

- **In-person, Virtual, Separate Rooms:**
 - Live hearings may be conducted with all parties physically present in the same geographic location or, at the University's discretion, any or all parties, witnesses and other participants may appear at the live hearing virtually, with technology enabling participants to simultaneously see and hear each other.
 - Upon the request of either party, the University will conduct the live hearing with the parties located in separate rooms with technology enabling the members of the determination panel and parties to simultaneously see and hear the party or witness answering questions.
- **Hearing Advisor:**
 - All parties must have a Hearing Advisor present at the live hearing.
 - The Hearing Advisor may be, but is not required to be, an attorney.
 - The Hearing Advisor may be, but is not required to be, an individual whom a party has selected as a personal or legal/advocate supporter.
 - Only one Hearing Advisor for each party may be present during the live hearing and no other supporter(s) may attend the hearing.
 - If a party does not have a Hearing Advisor present at the live hearing, the University will provide a Hearing Advisor to the party without fee or charge to conduct cross-examination on behalf of the party during the live hearing.
- **Relevant Cross-Examination:**
 - The determination panel will permit each party's Hearing Advisor of choice to ask the other party and any witnesses all relevant questions and follow-up

- questions, including those challenging credibility.
 - Only questions determined by the determination panel to be relevant may be asked.
 - Before a party or witness answers a cross-examination or other question, the determination panel must first determine whether the question is relevant. If the determination panel excludes a question as not relevant, the panel will explain this decision.
 - Such cross-examination at the live hearing must be conducted directly, orally and in real time by the party's Hearing Advisor of choice.
 - Parties are not permitted to directly question the other party(ies) or witnesses at the hearing. All questioning must be via the Hearing Advisor.
- **Questions about Sexual Predisposition or Prior Sexual Behavior:**
 - Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the either party'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.
 - Questions and evidence about the Respondent's romantic or sexual history will not be relevant, other than 1) questions and evidence concerning the parties' shared romantic or sexual history that are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant; 2) questions and evidence concerning specific incidents of the Respondent's prior sexual behavior with respect to the Complainant that are offered to prove consent; or 3) questions and evidence concerning the Respondent's prior sexual history with someone other than the Complainant if deemed relevant to prove the source of injury or prior sexual misconduct, to show that an individual has an ulterior motive, or to impeach the Respondent's credibility after the Respondent has put their own prior sexual conduct at issue.
- **Questions about Prior Conduct Violations:**
 - Questions and evidence about any prior incident are generally not relevant, but the determination panel has discretion to consider evidence of any prior incident(s) that involved conduct substantially similar to the allegation(s) under investigation or demonstrates a common pattern of behavior.
- **Questions about Mental Health Conditions:**
 - The determination panel will not solicit, consider or permit questions about or introduction of information concerning a party's mental health history, including any mental health diagnosis, counseling, or treatment, unless the party consents to the use of such information.
- **Medical Records:**
 - The determination panel will not access, consider, disclose, permit questions about or introduction of information concerning a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional 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.

- **Submission to Cross-Examination:**
 - If a party or witness does not submit to cross-examination at the live hearing, the determination panel must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the determination panel 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.
- **Recording:** The University will create an audio or audiovisual recording, or transcript, of any live hearing, and will make it available to the parties for inspection and review.

G. Determination Regarding Responsibility

The determination panel will issue a written determination regarding responsibility applying the preponderance of the evidence standard. The written determination will be issued simultaneously to both parties and will include:

- Identification of the allegations of Title IX 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 Sexual Misconduct Policy to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions imposed on the Respondent, and whether the University will provide to the Complainant remedies designed to restore or preserve equal access to its education programs and/or activities; and
- Information about procedures and permissible bases for the Complainant and Respondent to appeal.

Remedies provided to the Complainant need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent.

H. Sanctioning

The determination panel is responsible for sanctioning Respondents found responsible for engaging in Title IX Sexual Harassment.

The determination panel may consider the following factors in the sanctioning process:

- The specific misconduct at issue;
- The circumstances accompanying any lack of [consent](#) (e.g., force, threat, coercion, intentional incapacitation, etc.);
- The Respondent's state of mind (bias-motivated, reckless, negligent, etc.);
- The Respondent's prior disciplinary history;
- The safety of the University community;
- Impact or mitigation statement by one or both parties;
- The Respondent's conduct during the investigation and resolution process; and
- Such other factors as the resolution panel deems appropriate.

The determination panel will impose sanctions that are fair and appropriate, consistent with the University's handling of similar cases, adequate to protect the safety of the campus community, and reflective of the seriousness of the misconduct at issue. The determination panel may impose any one or more of the following sanctions on a Respondent found responsible for sexual misconduct, or other such appropriate sanction as the circumstances may dictate:²

- Reprimand/warning;
- Changing the Respondent's academic or employment schedule;
- Disciplinary probation;
- Revocation of honors or awards;
- Loss of privileges;
- Imposition of conditions of employment;
- Restricting access to University facilities or activities, including student activities and campus organizations;
- Mandatory training;
- Service hours;
- Alcohol and/or drug assessment or counseling;
- Issuing a "no contact" order to the Respondent or requiring that an existing order remain in place;³
- Moving the Respondent's residence on campus;
- Dismissal, termination or restriction from University employment;
- Making a former University employee or student (including those expelled or terminated pursuant to these sanctions) ineligible for hire or rehire by the University;
- Removal from student housing;
- Demotion or other removal from a management, supervisory or leadership role(s);
- A full or partial ban from campus (either limited time or indefinite);
- Transcript notations;
- Deferred suspension;
- Restriction from University sponsored or affiliated events;
- Pay reduction;
- Loss of raise;
- Loss of supervision or oversight duties;
- Referral for further sanctioning pursuant to applicable policies and/or procedures;
- Employment record notations, including an ineligibility for rehire notation;
- Suspension;
- Expulsion; and
- Revocation of degree.

The determination panel must inform OIE promptly of the decision and any sanctions.

The determination panel may recommend, and the Title IX Coordinator may implement, additional measures to remedy the effects of the sexual misconduct on the Complainant, designed to restore or

² Where the Respondent is a faculty member, the only available sanction for a policy violation(s) will be referral for further sanctioning pursuant to applicable policies and/or procedures. Should this sanction be imposed, both parties will be informed of subsequent processes and sanctions issued as appropriate and required by law.

³ All reported violations of "no contact" orders will be assessed to determine whether additional misconduct charges are warranted.

preserve equal access to the University's education program or activity. Such remedies need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent. These include but are not limited to: providing an escort for passage between classes and activities; ensuring the Complainant and Respondent do not share classes or extracurricular activities; moving the Respondent or Complainant (if the Complainant requests to be moved) to a different residence hall; providing victim focused services including medical, counseling and academic support services, such as tutoring; and arranging for the Complainant to have extra time to complete or re-take a class or withdraw from a class without an academic or financial penalty.

The determination panel may also recommend, and the Title IX Coordinator may implement, additional measures that are designed to prevent the recurrence of sexual misconduct or respond to the effects of the sexual misconduct on the University community that may include, but are not limited to: increased monitoring, supervision, or security at locations or activities where the sexual misconduct occurred; additional training and/or educational materials for students or groups; revision of the Sexual Misconduct Policy; and campus climate surveys.

I. Appeals

Both parties have the right to appeal the determination panel's determination regarding responsibility and the dismissal of a Formal Complaint or any allegations therein on the following bases:

- A procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time of the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
- The Title IX Coordinator, investigator or determination panel (or member thereof) 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; and/or
- *In cases where one or more of the parties is a student*, the hearing determination or sanction.

A party has seven (7) calendar days from receipt of the determination or dismissal notification to appeal. Any appeal must be filed in writing with the determination panel who issued the decision under appeal. The determination panel will then promptly forward the written appeal to the appropriate Appeal Officer.

The Appeal Officer or designee will notify both parties in writing that the appeal has been received and is under consideration. After receiving this notification, both parties have seven (7) calendar days to submit a written statement in support of, or opposing, the outcome under appeal.

The Appeal Officer:

- Will be formally trained, as required by law;
- Will implement appeal procedures equally for both parties;
- Will have access to the evidence file, the investigative report, the recording or transcript of the hearing, the written determination of the determination panel, and appellate submissions of the parties;
- Will not have a conflict of interest or bias against Complainants or Respondents generally or individually as to the specific matter; and
- Will not be the same person as the Title IX Coordinator, the investigator(s), or the determination panel that reached the determination regarding responsibility or dismissal.

The appeal process does not involve another hearing or any meetings with the Complainant, Respondent,

supporters or Hearing Advisors.

If the Appeal Officer concludes that a change in the determination of responsibility or sanctioning determination is warranted, they may (1) enter a revised written determination; (2) remand the matter to the determination panel to reconsider a determination or sanction; or (3) remand the matter for further investigation by the investigator(s).

The Appeal Officer will simultaneously send the written appeal determination, including a description of the result of the appeal and the rationale for the result, to the Complainant and Respondent, with a copy to the Title IX Coordinator. No further appeals are permitted.

J. Exclusivity of Procedures

These Procedures for Title IX Sexual Harassment are the exclusive procedures for investigation and adjudication of Title IX Sexual Harassment involving all members of the University community, including students, faculty, and staff. If the determination panel makes a finding of Title IX Sexual Harassment and issues a sanction of referral for further sanctioning pursuant to applicable policies and/or procedures, such applicable policies and/or procedures shall apply to such further sanctioning and any appeal of such further sanctioning. To the extent other applicable policies and/or procedures conflict with or are inconsistent with the Sexual Misconduct Policy and Procedures, the Sexual Misconduct Policy and Procedures shall take precedence.