

## **GRIEVANCE PROCEDURES FOR FORMAL COMPLAINTS OF SEXUAL HARASSMENT, AND MISCONDUCT**

### **I. Who May Utilize this Procedure**

This procedure may be used by any member of the University community who is participating in or attempting to participate in the University's education program or a University-related activity. It is applicable to Formal Complaints concerning Title IX Sexual Harassment (which includes Hostile Environment Harassment, Quid Pro Quo Harassment, Sexual Assault, Domestic Violence, and Dating Violence). This procedure may also be used by any member of the University community who wishes to file a Complaint of Employee Sexual Misconduct, and Sexual Misconduct (Student Code Violation) as set forth in the Sexual Misconduct, Discrimination, and Harassment Policy.

The University may modify these procedures at any time as deemed appropriate for compliance with applicable federal, state, and local laws and guidance.

If a Formal Complaint or Complaint triggers this Procedure but also includes allegations that could constitute a separate violation of the Student Code of Rights and Responsibilities or other applicable policy, this Procedure may be modified as reasonably necessary to fully investigate the matter and to avoid duplicative investigations. Prior to initiating any such additional investigation into misconduct under the Student Code of Rights and Responsibilities or employee misconduct, the Title IX Coordinator shall obtain written authorization from the Director of Student Conduct or the Chief Human Resources Officer.

This procedure also applies to students, faculty, and staff at Rogers State University (RSU) or Cameron University (CU) who are participating in or attempting to participate in the an RSU/CU education program or a RSU/CU -related activity. The University is providing certain services relating to sexual misconduct, discrimination, and harassment to RSU/CU. If you are a student, faculty member, or employee at Rogers State University or Cameron University, please consult Appendix C for RSU/CU specific contact information and policy references.

### **II. Filing of Formal Complaint of Title IX Sexual Harassment**

This Grievance Procedure is initiated with a Formal Complaint of Title IX Sexual Harassment or Complaint of Employee Sexual Misconduct or Sexual Misconduct (Student Code Violation).

A Formal Complaint must be filed with the Title IX Coordinator (or any Associate Equity Officer or Associate Title IX Coordinator, all of whom constitute the Title IX Coordinator for purposes of this Policy). The Formal Complaint may be filed in person, by mail, or by electronic mail at any time of day, including during non-business hours, using the contact information listed for the Title IX Coordinator. Generally, a Formal Complaint should be filed as quickly as possible to facilitate the ability to gather facts and evidence; however, every Formal Complaint will be reviewed regardless of when an incident occurred. The Office of Institutional Equity encourages the use of its in-office form for filing a Formal Complaint; however, no particular form is required as long as it (1) is signed, (2) alleges sexual harassment, against a Respondent, and (3) requests an investigation.

Where the Title IX Coordinator signs a Formal Complaint, the Title IX Coordinator is not a Complainant or party during a grievance process and will comply with the requirements for Title IX personnel to be free from conflicts and bias.

The Title IX Coordinator may consolidate Formal Complaints as to allegations of Title IX 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 arise out of the same facts or circumstances. Where a grievance process involves more than one Complainant or more than one Respondent, references in this section to the singular “party,” “Complainant,” or “Respondent” include the plural, as applicable.

### **III. Filing a Complaint of Employee Sexual Misconduct or Sexual Misconduct (Student Code Violation)**

The process for a filing a Complaint of Employee Sexual Misconduct or Sexual Misconduct (Student Code Violation) is the same as the process for filing a Formal Complaint of Title IX Sexual Harassment above, except that prior to initiating an investigation into the alleged conduct, the Title IX Coordinator must first request authorization to investigate from the Chief Human Resources Officer or Director of Student Conduct, who will determine whether the University has jurisdictional authority to impose disciplinary sanctions on the Respondent pursuant to the applicable Staff and Faculty Handbook provisions or Student Code of Rights and Responsibilities, as applicable. Once a Complaint is filed, the Complaint procedures will follow the same procedures for Formal Complaints of Title IX Sexual Harassment except where specifically noted herein or in the Grievance Procedures for Formal Complaints of Title IX Sexual Harassment or Sexual Misconduct.

### **IV. Dismissal or Withdrawal of a Complaint**

#### **A. Mandatory Dismissal of Formal Complaint of Title IX Sexual Harassment**

Either upon the initial review of a Formal Complaint or during the course of an investigation, the Title IX Coordinator or Investigator shall dismiss a Formal Complaint of Title IX Sexual Harassment if:

- The conduct, as alleged, does not meet the definition of Title IX Sexual Harassment even if proved;
- The alleged conduct did not occur in the University’s education program or activity; or
- The alleged conduct did not occur against a person in the United States.

If a Formal Complaint is dismissed for any of the above reasons, the Complainant and Respondent will be provided a written notice of the dismissal and the reason(s) for dismissal.

Dismissal of the Formal Complaint of Title IX Sexual Harassment does not preclude action under other policies or codes of conduct of the University. If the conduct, as alleged, would constitute Employee Sexual Misconduct or Sexual Misconduct (Student Code Violation), the grievance process may continue in accordance with these procedures. After a dismissal, the Title IX Coordinator shall issue a Written Notice to Parties reflecting the dismissal, the correct charge, if any, and any changes to disciplinary procedures without requiring further action by either party.

## **B. Discretionary Dismissal**

The Title IX Coordinator or Investigator may dismiss a Formal Complaint of Title IX Sexual Harassment, or a Complaint of Employee Sexual Misconduct/Sexual Misconduct (Student Code Violation) if:

1. The Complainant requests in writing to withdraw or dismiss a Formal Complaint or any allegations therein;
2. The Respondent is no longer enrolled in or employed by the University; or
3. Any specific circumstances exist which would prevent the University from gathering evidence sufficient to reach a determination regarding responsibility.

After a dismissal under this section, the Title IX Coordinator shall issue a Written Notice to Parties reflecting the correct charge, if any, and any changes to disciplinary procedures without requiring further action by either party.

## **C. Appeal of Dismissal**

Either party may appeal a dismissal of a Formal Complaint of Title IX Sexual Harassment or a Complaint of Employee Sexual Misconduct/Sexual Misconduct (Student Code Violation), or any allegations therein. Such appeals may only be made on the following bases:

1. a procedural irregularity affected the outcome of the matter;
2. new evidence that was not reasonably available at the time the determination of dismissal, that could reasonably affect the decision, and;
3. the Title IX Coordinator or Investigator had a conflict of interest or bias for or against complainants or respondents (generally or individually) that affected the outcome.

Appeal of a dismissal in which the Respondent is a student will be evaluated by the Vice President for Student Affairs. Appeal of a dismissal in which the Respondent is an employee will be evaluated by the Chief Human Resources Officer. A copy of the appeal will be provided to all other parties, who will be afforded up to five (5) University business days to submit a written statement in response. Within five (5) University business days of receiving the written statement, the Vice President for Student Affairs or Chief Human Resources Officer will issue a written decision including the rationale for the decision and provide it simultaneously to the parties.

If an appeal of a dismissal is granted, the Formal Complaint will be reinstated.

If an appeal of a dismissal is denied, all appropriate administrative officials and parties shall be notified in writing that the matter is closed, except in cases where a dismissal of a Formal Complaint of Title IX Sexual Harassment allegations will be investigated as a charge of Employee Sexual Misconduct or Sexual Misconduct (Student Code Violation).

## **V. Grievance Process**

Once a Complainant has been informed of the applicable policies and procedures and available Supportive Measures, and a Formal Complaint has been filed, the grievance process will follow the following general format:

## **A. Initial Information and Required Notices**

### **1. Initial Intake**

An initial interview with the Complainant to gather information about the Formal Complaint, if needed.

### **2. Written Notice to Parties**

Upon receipt of a Formal Complaint, the University will provide Written Notice to the Complainant and Respondent(s) identified in the Formal Complaint. A Written Notice to Parties will include:

- A meaningful summary of all of allegations,
- The identity of the involved parties (if known),
- The precise misconduct being alleged,
- The date and location of the alleged incident(s) (if known),
- The specific policies implicated,
- A description of the applicable procedures,
- A statement of the potential sanctions/responsive actions that could result,
- A statement that the University presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination,
- A statement that determinations of responsibility are made at the conclusion of the process and that the parties will be given an opportunity to inspect and review all directly related and/or relevant evidence obtained during the review and comment period,
- A statement about the University's policy on retaliation,
- Information about the privacy of the process,
- Information on the need for each party to have an Advisor of their choosing and suggestions for ways to identify an Advisor,
- A statement informing the parties that University policy prohibits knowingly making false statements, including knowingly submitting false information during the resolution process,
- Detail on how the party may request disability accommodations during the interview process,
- A link to the University's VAWA Brochure,
- The name(s) of the Investigator(s), along with a process to identify, in advance of the interview process, to the Title IX Coordinator any conflict of interest that the Investigator(s) may have, and
- An instruction to preserve any evidence that is directly related to the allegations.

Amendments and updates to the written notice may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various charges. Notice will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address(es) of the parties as indicated in official University records, or emailed to the parties' University-

issued email or designated accounts. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

**B. Investigation**

1. Gathering Evidence

The Title IX Coordinator will assign the matter to an impartial Investigator. If, during the course of gathering evidence, the Investigator uncovers additional allegations of Prohibited Conduct, the Investigator will promptly supplement the Written Notice to Parties to include them.

The Investigator will provide an equal opportunity for the parties to present witnesses, including fact witnesses and expert witnesses, and other evidence. The Investigator may conduct interviews, collect statements, collect documents or electronic evidence, and medical evidence from the parties or if deemed necessary by the Investigator. However, in the case of medical records (records made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting or assisting in that capacity) made or maintained in connection with the provision of treatment to a party, the Investigator must obtain that party's voluntary written consent prior to accessing, using, considering, or disclosing the records.

Information that is protected by a legal privilege such as attorney-client or doctor-patient cannot be used during an investigation unless the individual holding that privilege has waived it. Neither the Investigator nor either party is allowed to seek or permit questions about or allow the introduction of evidence that is protected by a legally recognized privilege. Individuals may opt to waive their own privileges if they want but they do not have to.

The Investigator will not consider evidence that is not relevant. Irrelevant evidence may include: (1) incidents not directly related to the possible violation, unless they evidence a pattern; (2) improper character evidence concerning the parties; or (3) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, 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.

2. Review of Evidence and Response

Prior to completion of the investigative report, the Investigator will provide the parties and their advisor(s), if any, with an electronic or hard copy of all evidence that is directly related to the allegations for their review and inspection. Evidence that is not directly related to the allegations, evidence that is known to have been obtained illegally (e.g., unlawfully obtained recordings), evidence known to be protected by a legally recognized privilege (e.g., attorney client privilege, doctor patient privilege), and/or medical records obtained without the party's consent will be redacted or withheld. The parties and their advisors, if any, may not make

the evidence available to any third party except as reasonably necessary in connection with the grievance. The parties will have ten (10) University business days to review the evidence obtained as part of the investigation that is directly related to the Complainant's allegations and prepare a written response that may propose corrections, provide context, and identify missing evidence. The Investigator shall consider the written responses, if any, and conduct any further investigation or correction that may be warranted prior to completion of the investigation report.

### 3. Investigative Report

At least ten (10) University business days prior to a hearing, the Investigator will fairly summarize the relevant evidence and send an electronic or hard copy of the investigative report to the parties and advisor(s) for their review and written response. Relevant evidence for the purposes of this grievance procedure is evidence that is pertinent to proving whether facts material to the allegations under investigation are true. Relevant evidence does not include illegally obtained evidence, evidence known to be protected by a legally recognized privilege, and/or medical records obtained without the party's consent.

## C. Live Hearing

1. The parties will present relevant evidence at a Live Hearing before a panel of independent Decision-makers. Decision-makers are contracted by the University and do not report to the Title IX Coordinator or Investigators; however, the Office of Institutional Equity may provide administrative support for the Live Hearing by facilitating scheduling, reserving space, and similar tasks. The Live Hearing Procedures are attached hereto as Appendix A.

## D. Determination regarding responsibility.

At the conclusion of the Live Hearing, the Decision-maker(s) will reach a conclusion regarding responsibility. If the Respondent is found responsible, previous disciplinary action of any kind involving the Respondent may be considered in determining an appropriate disciplinary sanction. This information is only considered at the sanction stage of the process. The parties may each submit a written impact statement for the consideration of the Decision-maker(s) in sanctioning, which will not be reviewed until a conclusion regarding responsibility has been reached. The Decisionmaker(s) will enter a Determination regarding responsibility ("Determination"), which shall include:

1. Identification of the allegations potentially constituting Sexual Harassment;
2. 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;
3. Findings of fact supporting the Determination;
4. Conclusions regarding the application of the Sexual Misconduct, Discrimination, and Harassment Policy to the facts;
5. A statement of, and rationale for, the result as to each allegation, including a

determination regarding responsibility, any disciplinary sanctions recommended to be imposed on the Respondent, and whether remedies designed to restore or preserve equal access to the University's education program or activity will be provided to the Complainant; and

6. The University's procedures and bases for the parties to appeal the Determination.

The Determination will be provided to the parties simultaneously, and the Determination will become final either on the date that a written determination of the result of the appeal is provided to the parties, 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 effective implementation of any remedies.

**E. Appeals, Sanctions, and Remedies**

1. Grounds for Appeal

Either party may appeal a Determination. Appeals may only be made on the following grounds:

- a procedural irregularity affected the outcome of the matter;
- new evidence that was not reasonably available at the time the Determination was made, that could affect the outcome of the matter; or
- the Title IX Coordinator, Investigator, or Decision-makers had a conflict of interest or bias for or against complainants or respondents (generally or individually) that affected the outcome of the matter.

2. Procedure for Appeals

Either party may appeal a Determination with the Title IX Coordinator within five (5) University business days of receiving the written Determination. Both parties shall receive notice of the Appeal. The non-appealing party will be afforded up to five additional (5) University business days to submit a written Response to the Notice of Appeal. The Title IX Coordinator shall provide the Appeal and Response to the appropriate Appellate Decisionmaker. The Appellate Decisionmaker shall enter a Decision of Appeal within ten (10) University business days after the parties' statements, if any, are received. As set forth below, the appellate Decision-maker is not the same person as the Decision-maker entering the Determination, the Title IX Coordinator, or the Investigator.

- Students

In all cases in which the Respondent is a student, the Vice President for Student Affairs will determine the appeal. If the Vice President for Student Affairs grants the appeal, the matter will be overturned or remanded for further investigation. If denied, and if sanctions are recommended, the Vice President for Student Affairs will make a written determination to accept the proposed sanctions or impose a more or less severe sanction against a student who has been found responsible.

- Staff members

In all cases in which Respondent is a staff member, the Chief Human Resources Officer, in conjunction with the executive officer over the area, will determine the appeal. If the Chief Human Resources Officer, in conjunction with the executive officer over the area, grants the appeal, the matter will be overturned or remanded for further investigation. If denied, and if sanctions are recommended, the Chief Human Resources Officer, in conjunction with the executive officer over the area, will make a written determination to accept the proposed sanctions or impose a more or less severe sanction against a staff member who has been found responsible.

- Faculty members

In cases in which the Respondent is a faculty member, a committee of the Faculty Senate for the Respondent's home campus will determine the appeal. If appeal is granted, the matter will be overturned or remanded for further investigation. If denied, and if sanctions are recommended, the committee may prepare a written opinion confirming the appropriateness of the recommended sanction, which will be forwarded to the Provost of the appropriate campus and the University President.

Alternatively, before forwarding an opinion regarding the sanctions, the Faculty Senate may refer the matter to Faculty Appeals Board for the sole purpose of evaluating the proposed sanction. The Faculty Appeals Board may conduct additional inquiry in accordance with its sanctioning procedures; provided, however, the underlying findings of the Decision-makers may not be disturbed and the Faculty Appeals Board shall not elicit further evidence or testimony regarding the same. The University President will provide a written statement accepting the recommended sanction or imposing a more or less severe sanction. The decision of the University President shall be final, unless the sanction requires Board of Regents' action. If so required, the Board of Regents will review the findings and written recommendations of the Decision-makers, the appellate body, and the University President and enter a decision.

## **VI. Informal Resolution.**

At any time after the filing of a Formal Complaint but not less than ten (10) University business days prior to a Live Hearing, either party may request that the University facilitate an informal resolution. Informal resolution is an available option when both parties voluntarily agree to participate in writing and if the Title IX Coordinator agrees that informal resolution is appropriate given the nature of the allegations and the relationship of the parties. Informal resolution will not be facilitated in cases involving a student Complainant and employee Respondent. To allow the parties to participate without concern for how their statements may affect the outcome of an investigation, the Title IX Coordinator and Office of Institutional Equity staff will not participate in informal resolution.

If the parties reach agreement during the informal resolution process, the facilitator will reduce



the agreement to writing and present it to the Title IX Coordinator, who may approve or disapprove the agreement. An approved informal resolution agreement will be recognized as a binding agreement between the parties enforceable by the University. Once the parties have entered into an approved informal resolution agreement, the grievance will be deemed resolved and may not be re-opened.

At any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the Formal Complaint. If any party declines to participate in the informal resolution process chooses to withdraw from participation, or if informal resolution is not successful, the grievance process continues.

## **VII. Conflicts of Interest**

Any individual materially involved in the administration of the grievance process (including the Title IX Coordinator, Investigator(s), and Decision-maker(s)) may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent. These individuals have been trained to meet the requirements under the Title IX regulations. Training information can be found on the Title IX website at: [www.ou.edu/eoo](http://www.ou.edu/eoo).

The Title IX Coordinator will vet the assigned Investigator(s) and Decision-maker(s) to ensure impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. The parties may, at any time during the grievance process, raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another member will be assigned and the impact of the bias or conflict, if any, will be remedied. If the source of the conflict of interest or bias is the Title IX Coordinator, concerns should be raised with President of the University.

## **VIII. Timing**

If the Respondent is a graduating student, a hold may be placed on graduation and/or official transcripts until a matter is fully resolved (including any appeal).

Hearings for possible violations that occur near or after the end of an academic term that are unable to be resolved prior to the end of term will typically be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeline followed by the Recipient and remain within the 60-90 business day goal for resolution.

## **Appendix A: Live Hearing Procedures for Title IX Sexual Harassment, Including Hearing Process for Employee Sexual Misconduct and Sexual Misconduct (Student Code Violation)<sup>1</sup>**

When the Formal Complaint alleges Sexual Harassment and is not dismissed as described in Section IV or informally resolved as described in Section VI, the Formal Complaint will be resolved through the Hearing Process. This section explains the Hearing Process by describing: (1) the appointment of a Hearing Officer; (2) the scope of the Hearing; (3) the notice of the Hearing to the Parties, (4) what will occur before the Hearing, (5) the pre-Hearing conference, (6) the logistics for the Hearing; (7) what will occur during the Hearing, (8) what will occur after the Hearing, and (9) when the outcome of the Hearing is final.

1. Appointment of a Hearing Officer. The Title IX Coordinator will appoint a Hearing Officer to hear the case and determine the outcome.
  - a. The Title IX Coordinator may serve as an administrative facilitator of the Hearing for procedural efficiency.
  - b. The Title IX Coordinator will coordinate with the Hearing Officer and the Parties to schedule a date and time for the Hearing.
  
2. Scope of the Hearing. The Hearing Officer has the authority to hear and make determinations on all allegations of Sexual Harassment and may also hear and make determinations on any additional alleged violations of this Policy that would otherwise be subject to the Prompt and Equitable Resolution Process when those alleged violations occurred in concert with the Sexual Harassment.
  
3. Notice of Hearing to the Parties. At least 10 days university business days before the Hearing, the Parties will receive a Notice of Hearing that will inform them of date, time, location, and the participants (including the Witnesses who will be requested to testify) in the Hearing. The Notice of Hearing will also include the name of the Hearing Officer the Hearing Rules and Procedures; potential Sanctions; and the purpose of the Hearing, which is to adjudicate the allegations, determine Responsibility, and issue an appropriate Sanction, if applicable.
  - a. *Challenging the Hearing Officer for Perceived Bias or Conflict of Interest.* Within 1 university business day of receipt of the Notice of Hearing, either Party may assert to the Title IX Coordinator, in writing, that the Hearing Officer has a perceived bias or conflict of interest. If the Title IX Coordinator determines that such a bias or conflict exists, the Title IX Coordinator will replace the Hearing Officer with an alternate. The Title IX Coordinator's determination is final.
  - b. *Party Choice to Participate in the Hearing.* The Parties are not required to participate in or submit to Cross-Examination in the Hearing Process and cannot be forced to do so.

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<sup>1</sup> Appendix A, B & C are adopted with permission of Marquette University for institutional use.

- c. *Virtual or In-Person Hearing.* The Title IX Coordinator will choose whether to hold the Hearing in-person or virtually. A Party may request that the Hearing occur with the Parties located in separate rooms or entirely virtually, with technology enabling the Hearing Officer and Parties to simultaneously see and hear the Party or the Witness answering questions.
  - d. *Participants with Disabilities.* The University will ensure that individuals with disabilities have equal access to the resolution process. Anyone needing such accommodations or support should contact the Accessibility and Disability Resource Center Director, who will review the request and, in consultation with the person requesting the accommodation and the Title IX Coordinator, determine which accommodations are appropriate and necessary for participation in the process.
4. Before the Hearing.
- a. *Hearing Officer to Review Investigative Report and Relevant Evidence.* The Hearing Officer will review the Investigative Report and Investigative File before the Hearing. The Hearing Officer will specifically review and focus on the Investigative Report and the Relevant Evidence relied upon therein. The Hearing Officer will review evidence determined not relevant by the Investigator only if the Parties wish to challenge that determination at the Hearing.
  - b. *Notice to Witnesses.* The Parties have equal opportunity to present Witnesses at the Hearing. The Hearing Officer may also request the presence of Witnesses that it deems necessary, even if those Witnesses are not presented by the Parties. The Title IX Coordinator will notify each Witness in writing of the request to participate in the Hearing.
  - c. *Unavailability of Witnesses.* Witnesses are not required to participate in the Hearing and cannot be forced to do so. Any Witness who agrees to participate but cannot attend the Hearing must let the Title IX Coordinator know at least five (5) university business days prior to the Hearing so that appropriate arrangements can be made.
5. Pre-Hearing Conference. The Title IX Coordinator may coordinate an in-person or virtual pre-Hearing conference with the Parties and their Advisors with the Hearing Officer. The pre-Hearing conference will be audio recorded. The purposes of the pre-Hearing conference are to:
- a. Ensure that the Parties and their Advisors understand the Hearing Process and receive answers to any Hearing Process-related questions;
  - b. Have the Hearing Officer hear and rule on any evidentiary challenges raised by the Parties;<sup>2</sup>
  - c. Provide the opportunity for the Parties and their Advisors to seek a pre-determination of relevance for questions the Advisors intend to ask the other Party and Witnesses (optional);
  - d. Conduct an overview of the Hearing Rules and Procedures;

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<sup>2</sup> For example, the Hearing Chair will consider arguments that evidence identified as relevant in the final Investigative Report is, in fact, not relevant. Similarly, evidence identified by the Investigator as directly related but not relevant may be argued to be relevant.

- e. Test the technology to be used at the Hearing, and
  - f. Address any other pre-Hearing matter.
6. Logistics of the Hearing. This section covers the logistics of the Hearing, including how the Parties will be physically separated for in-person Hearings, the use of technology in Hearings, rules for Advisors, handling of Witnesses (including the Investigator as a Witness), and what will happen if Parties or Witnesses fail to appear at the Hearing.
- a. *Location of In-Person Hearing.* If held in person, the Hearing will take place on the appropriate university campus as determined by the Hearing Officer.
  - b. *Separation of Parties and Witnesses During an In-Person Hearing and Use of Technology.* If the Hearing is in person, the Parties and Witnesses are generally not permitted to be in the same room; video of the Hearing will be streamed in real time. The technology will enable each Party and the Hearing Officer to simultaneously see and hear (or, if hearing impaired, to access through auxiliary aids or services) the Party or Witness answering questions. The Officer must be able to see the Parties and Witnesses as they are speaking. The use of technology does not compromise the fairness of the Hearing.
  - c. *Virtual Hearings.* 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 Hearing virtually with technology enabling the participants to simultaneously see and hear each other.
  - d. *Closed to Public.* Hearings are closed to the public. All participants involved in a Hearing are expected to respect the seriousness of the matter and the privacy of the individuals involved. The University's expectation of privacy during the Hearing process should not be understood to limit any legal rights of the Parties during or after the resolution. The University may not, by federal law, prohibit the Parties from disclosing the final outcome of a Formal Complaint process (after any appeals are concluded). The University's obligations regarding disclosure are governed by the Family Educational Rights and Privacy Act (FERPA) and any other applicable privacy laws.
  - e. *Audio Recording.* Hearings are audio-recorded and will be made available to either Party by request.
  - f. *Cross-Examination.* At the Hearing, each Party's Advisor must be permitted to ask the other Party and Witnesses all relevant questions and follow-up questions, including those challenging credibility. This type of questioning is referred to as Cross-Examination. Party Advisors conduct all questioning on behalf of their Parties.
  - g. *Rules for Advisors.* The Parties *must* have an Advisor accompany them to the Hearing or to appear on their behalf if they do not attend the Hearing. *See Appendix B.* The Complainant and the Respondent are prohibited from questioning each other and Witnesses directly; rather, they must do so through their Advisors. An Advisor's role in the Hearing Process is limited as follows:
    - i. The Advisor's role is to pose questions to the other Party and Witnesses on their Party's behalf.

- ii. The Advisor cannot respond to questions from the Hearing Officer or the other Advisor that are directed to their Party.
        - 1. Complainants and Respondents are expected to respond to questions from the Hearing Officer and from the other Party's Advisor on their own behalf.
      - iii. Upon request to the Hearing Officer, the Advisor may consult with their Party in private during the Hearing but not while a question is pending.
    - h. *Witnesses.* The Hearing Officer will call the relevant Witnesses named in the Investigative Report. The Investigator may also serve as a Witness. Witnesses (other than the Investigator) are not allowed to be present to hear the testimony of the Parties or of other Witnesses.
      - i. *"New" Witnesses and Evidence.* The Hearing Officer may decide whether or how to place limits on evidence introduced at a Hearing that was not gathered and presented before the Hearing. If, at the Hearing, the name of a Witness arises, and that Witness was not previously disclosed during the Investigative Process, or if a Witness who was identified during the Investigative Process but who chose not to participate now desires to participate, the Hearing Officer may:
        - 1. Temporarily adjourn the Hearing and request that the Investigator interview the Witness and provide the interview transcript or summary to the Parties before reconvening the Hearing, or
        - 2. Continue the Hearing and invite the Witness to appear and submit to questions from the Hearing Officer and the Parties' Advisors.
      - i. *No-Show Parties or Witnesses.* If the Complainant, the Respondent, or Witnesses fail to appear and/or participate, the Hearing will continue as scheduled unless the Hearing Officer determines there is Good Cause to suspend the Hearing.
      - j. *The Investigator.* The Investigator may be present for the entire Hearing.
7. Hearing. The Hearing Rules and Procedures will be provided to the Parties in advance of the Hearing and will provide more specifics about how the Hearing will be conducted and the rules within the Hearing, including rules of decorum. The Hearing Rules and Procedures apply equally to both Parties. The Hearing is not intended to be a repeat of the Investigation. In general, the Hearing will proceed as follows:
- a. To begin the Hearing, the Hearing Officer will provide to the Parties and their Advisors a brief overview of the Hearing Process and the expectations for participants' conduct. The Parties and their Advisors must agree to abide by those expectations or risk removal from the Hearing. If an Advisor is removed for failure to abide by the Hearing rules, the Hearing will continue after a new Advisor is selected by the Party or appointed by the University.
  - b. The Hearing Officer shall:
    - i. Exclude non-relevant questions and testimony;
      - a. Questions about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and/or 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.

- ii. Observe recognized legal privileges, and
- iii. Take reasonable steps to maintain order and decorum.
- c. The Hearing Officer will question the Complainant, the Respondent, and Witnesses directly.
- d. The Hearing Officer and the Advisors may question the Investigator as a Witness.
- e. Advisors must ask only relevant questions and follow-up questions to the other Party and Witnesses. Generally, Advisors will ask questions in the following manner:
  - i. Advisors will pose each question verbally to the Hearing Officer, who will determine whether the question is relevant.
  - ii. If the Hearing Officer deems the question relevant, the Hearing Officer will instruct the Party or Witness to answer the question.
  - iii. If the Hearing Officer deems the question not relevant, the Hearing Officer will explain the rationale for the determination and instruct the Party or Witness not to answer.
  - iv. The Hearing Officer may ask Advisors to frame why, from the Advisor's perspective, a question is or is not relevant, but the Hearing Officer will not entertain argument from the Advisors on relevance once the Hearing Officer has ruled on a question.
  - v. The Hearing Officer's decision on whether a question is relevant is final.
- f. The Hearing Officer may consider relevant statements made by Parties or Witnesses, even if those Parties or Witnesses do not submit to Cross-Examination at the Hearing, in reaching a determination on responsibility. This includes, but is not limited to, relevant statements made by the Parties and Witnesses during the Investigation, emails or text exchanges between the Parties leading up to or following the alleged Prohibited Conduct, and other statements from witnesses about or related to the alleged Prohibited Conduct. Also subject to Hearing Officer consideration are statements contained in police reports, sexual assault nurse examiner documents, medical reports, and other documents even if those statements are made by a Party or Witness who is not Cross-Examined at the Hearing. The Hearing Officer may consider certain types of statements by a Party where the statement itself is the alleged Prohibited Conduct, even if the Party does not submit to Cross-Examination. These statements can appear in text messages, e-mails, social media postings, audio or video recordings, or other documents or digital media created and sent by a Party as a form of alleged Sexual Harassment, or as part of an alleged course of conduct that constitutes Stalking.
- g. The Hearing Officer cannot draw an inference about Responsibility based solely on a Party's absence from the Hearing or refusal to answer Cross-Examination or other questions posed by an Advisor or the Hearing Officer.
- h. Typically, the questioning at the Hearing proceeds as follows:
  - i. The Hearing Officer will first question the Complainant.

- ii. Respondent’s Advisor may then question the Complainant.
  - iii. The Hearing Officer will question each Witness.
    - a. After the Hearing Officer questions a Witness, the Complainant’s Advisor, then the Respondent’s Advisor, may question that Witness.
  - iv. The Hearing Officer will next question the Respondent.
  - v. The Complainant’s Advisor may then question the Respondent.
  - i. If necessary, the Hearing Officer may re-call the Complainant, the Respondent, or any Witness for further questioning. If any Party or Witnesses are re-called, the Parties’ Advisors may ask follow-up questions.
8. After the Hearing. Following the close of the Hearing, the Hearing Officer will determine Responsibility. The Hearing Officer will draft a written determination, including Sanctions and Remedies if the Respondent is found Responsible, within 5 (five) university business days, and the Title IX Coordinator will contemporaneously inform the Parties of the outcome.
- a. *Determination of Responsibility.* The Hearing Officer will determine whether the Respondent is either Not Responsible or Responsible.
    - i. *Not Responsible.* The Respondent will be found Not Responsible when the Hearing Officer determines that it is more likely than not that the alleged behavior did not occur, that the evidence was inconclusive to determine whether it is more likely than not that the alleged behavior occurred, or that the alleged behavior occurred but did not violate this Policy.
    - ii. *Responsible.* The Respondent will be found Responsible when the Hearing Officer determines that it is more likely than not that the alleged behavior did occur and that the behavior violated this Policy.
  - b. *Written Determination.* The Hearing Officer will draft a written determination (“Notice of Outcome Following Hearing”) that will include:
    - i. Identification of the allegations potentially constituting Sexual Harassment;
    - ii. A description of the procedural steps taken from the receipt of the Formal Complaint through the determination of Responsibility, including any notices to the Parties, interviews with Parties and Witnesses, site visits, methods used to gather evidence, and Hearings held;
    - iii. Findings of fact supporting the determination;
    - iv. Conclusions regarding the application of this Policy to the facts;
    - v. A statement of, and rationale for, the result as to each allegation, and
      - 1. Where credibility of the Parties is an issue in determining Preponderance of the Evidence, the rationale will include an explanation of how the Hearing Officer resolved questions of credibility. Credibility determinations will not be based upon a person’s status as Complainant or Respondent.
    - vi. The procedures and permissible bases for appeal.
  - c. *Sanctions and Remedies.* If the Respondent is found Responsible, the Hearing Officer will include an appropriate Sanction within the Notice of Outcome Following

Hearing. The Hearing Officer will also issue Remedies for the Complainant to preserve or restore the Complainant's equal education access.

- d. *Notice of Outcome to Parties.* The Title IX Coordinator will contemporaneously inform the Complainant and the Respondent of the Hearing Officer's determination by issuing a Decision Notification Letter, attaching the Hearing Officer's Notice of Outcome Following Hearing.

9. Finality of Outcome. The Hearing Officer's determination regarding Responsibility becomes final either:

- a. On the date that the Title IX Coordinator provides the Parties with the Appeal Decision, if an appeal was filed, or
- b. On the date on which an appeal would no longer be considered timely.



## **APPENDIX B: Role of and Rules for Advisors**

Role of and Rules for Advisors. The Complainant and the Respondent each have a right to an Advisor of their choosing throughout the Grievance Procedure. This section explains (a) who can serve as an Advisor, (b) the role of the Advisor in the Grievance Procedure, generally, and (c) the role of the Advisor in the Hearing Process, specifically.

1. *Who Can Serve as an Advisor.* The Advisor may be any person of the Party's choosing. If either Party will not have an Advisor present at the Live Hearing, one will be provided by the University without fee or charge to that party to assist the party at the Live Hearing. No Party is required to have an Advisor, except within in the Hearing Process.
  - i. *Confidentiality.* All University-appointed Advisors have been deemed Confidential Resources, meaning that they will maintain Confidentiality throughout the Grievance Procedure; however, a Mandatory Reporter Employee or non-Confidential Resource serving as an Advisor is Confidential only *after* the filing of a Formal Complaint and a Notice of Formal Complaint and Allegations.
  - ii. *Parties' Consent to Share Information with Advisor.* Each Party must consent to the University sharing information related to the report of Prohibited Conduct directly with the Party's Advisor before information can be shared. The University may require Advisors to sign a non-disclosure agreement to ensure the Confidentiality of the information shared with them by the University.
2. *Role of the Advisor in the Grievance Procedure, Generally.* Advisors support the Parties and assist them through the Grievance Procedure. The Parties are expected to ask and respond to questions and submit evidence on their own behalf throughout the Investigative and Resolution Processes (except for the Hearing Process, as described in Appendix A) Although the Advisor may not speak on behalf of a Party, the Advisor may consult with the Party, either privately as needed, or by conferring during any meeting or interview (except in the Hearing Process). For longer or more involved discussions, the Parties and their Advisors should ask the Hearing Officer for breaks to allow for private consultation.
3. *Advisor's Role in the Hearing Process.* The Parties are required to have an Advisor during the Hearing Process. This section explains (i) a Party's options for choosing an Advisor, (ii) the Advisor's limited role, and (iii) the consequences for Advisors who overstep their role.
  - i. *Options for Choosing an Advisor.* A Party may, of course, use the Advisor they selected at the start of the Grievance Procedure. If that Advisor is unable or unwilling to serve as an Advisor for the Hearing Process, the Party may select a new Advisor. If a Party does not choose an Advisor for the Hearing Process, the University will provide an Advisor for the Party to conduct Cross-Examination of the other Party and Witnesses. All Advisors receive annual training regarding the Grievance Process set forth in the 2020 Title IX Regulations, 34 C.F.R. § 106. Advisors appointed by the University may not be dismissed by the Party, unless the appointed Advisor refuses to conduct relevant Cross-Examination on behalf of the Party.
  - ii. *Advisor's Limited Role.* The Advisor's role in the Hearing Process is limited to Cross-Examination of the other Party and of any Witnesses. An Advisor may not make a presentation on behalf of or represent the Party during any

meeting or proceeding in the Hearing Process and may not speak on behalf of the Party to the Investigator(s) or Hearing Officer, except during Cross-Examination. Advisors may ask process-related questions of the Title IX Coordinator, Investigator(s), or Hearing Officer.

The Parties are expected to respond to questions on their own behalf throughout Hearing Process, though the Party may consult with their Advisor as explained above.

If an Advisor fails to respect the limits of the Advisor role within any part of the Grievance Procedures, the Title IX Coordinator, Investigator, or Hearing Officer may require the Party to select a new Advisor.

## **Appendix C: Prompt and Equitable Grievance Process for Complaints of Gender-Based Discrimination, Retaliation, or False Reporting**

Formal Complaints alleging Sex Discrimination or Retaliation are adjudicated through the Prompt and Equitable Resolution Process. If a Formal Complaint alleges Sex Discrimination or Retaliation and Sexual Harassment, the Title IX Coordinator may combine all the allegations and have them adjudicated simultaneously through the Hearing Process (see Appendix A) or separate the Sexual Harassment allegations from Sex Discrimination or Retaliation allegations and have the matter proceed separately under the Hearing Process (for the allegations of Sexual Harassment) and under the Prompt and Equitable Resolution Process (for the allegations of Sex Discrimination or Retaliation).

1. Incorporates the Investigative Process. The Prompt and Equitable Resolution Process incorporates the Investigative Process, which includes the right of the Parties to have an Advisor (see Section V.).
  
2. Investigator Determines Responsibility. Following the Parties' review and written responses to the Investigative File and Investigative Report, the Investigator will objectively evaluate all Relevant Evidence and determine Responsibility. The Investigator will determine whether the Respondent is Not Responsible or Responsible.
  - a. *Not Responsible.* The Respondent will be found Not Responsible when the Investigator determines that it is more likely than not that the alleged behavior did not occur, that the evidence was inconclusive to determine whether it is more likely than not that the alleged behavior occurred, or that the alleged behavior occurred but did not violate this Policy.
  - b. *Responsible.* The Respondent will be found Responsible when the Investigator determines that it is more likely than not that the alleged behavior did occur and that the behavior violated this Policy.
  
3. Written Report. Following the Investigator's objective evaluation of the Relevant Evidence, the Investigator will draft a written determination called the Notice of Outcome Following Prompt and Equitable Resolution Process. That document will include:
  - a. Identification of the allegations potentially constituting Sex Discrimination or Retaliation;
  - b. A description of the procedural steps taken from the receipt of the Formal Complaint through the determination of Responsibility, including any notices to the Parties, interviews with Parties and Witnesses, site visits, methods used to gather evidence, and the process held;
  - c. Findings of fact supporting the determination;
  - d. Conclusions regarding the application of this Policy to the facts;

- e. A statement of, and rationale for, the result as to each allegation, and
    - i. Where credibility of the Parties is an issue in determining Preponderance of the Evidence, the rationale will include an explanation of how the Investigator resolved questions of credibility. Credibility determinations will not be based upon a person's status as Complainant or Respondent.
  - f. The procedures and permissible basis for appeal.
4. Review by Title IX Coordinator. The Title IX Coordinator will review the Notice of Outcome Following the Prompt and Equitable Resolution Process and approve the determination if the evidence supports the determination by a Preponderance of the Evidence. If the Investigator has found the Respondent Responsible, the Title IX Coordinator will determine the appropriate Sanction.
5. Inclusion of Sanctions and Remedies in Written Report. If the Title IX Coordinator has determined a Sanction is appropriate, the Investigator will include the imposed Sanction in the Notice of Outcome Following the Prompt and Equitable Resolution Process. The Investigator will also issue Remedies for the Complainant to preserve or restore the Complainant's equal education access.
6. Notice of Outcome to Parties. The Title IX Coordinator will contemporaneously inform the Complainant and the Respondent of the Investigator's finding and Sanctions, if applicable, by issuing a Decision Notification Letter, attaching the Investigator's Notice of Outcome Following the Prompt and Equitable Resolution Process.
7. Finality of Outcome. The Investigator's determination regarding Responsibility becomes final either:
  - a. On the date that the Title IX Coordinator provides the Parties with the Appeal Decision, if an appeal was filed, or
  - c. On the date on which an appeal would no longer be considered timely