



## **Procedures for Resolution of Reports Against Employees Under Cornell University Policy 6.4 for the Following Acts of Title IX Prohibited Conduct:**

- Attempting to Commit Prohibited Conduct;
- Dating and Domestic Violence;
- Retaliation;
- Sexual and Sex/Gender-Based Harassment;
- Sexual Assault;
- Stalking

These procedures apply to all units of the University except for Weill Cornell Medicine, which will administer Policy 6.4 under Weill Cornell Medicine procedures.

These procedures supersede other university policies and procedures. Employees who violate Policy 6.4 may face disciplinary action up to and including the termination of employment.

Policy 6.4 is administered by the Office of Institutional Equity and Title IX ("OIETIX") led by the Associate Vice President of Institutional Equity and Title IX. The Assistant Director of Institutional Equity and Title IX Coordinator both report to the Associate Vice President of Institutional Equity and Title IX. OIETIX may consult with other appropriate University officials and administrators, including the office of the University Counsel.

These procedures afford comprehensive and final university determinations regarding allegations of Title IX prohibited sexual harassment and sex/gender-based harassment (which includes quid pro quo harassment, hostile environment harassment, dating and domestic violence, sexual assault, and stalking), related retaliation, and attempting to commit these forms of prohibited conduct under Policy 6.4.<sup>1</sup> Resolution under these procedures does not prevent an employee from challenging the university's determination in a process external from the university. Matters resolved under these procedures are not subject to review or further appeal or grievance under any other university policies or procedures, including Trustee, college and Academic Freedom and Professional Standing of the Faculty ("AFPS") committee grievance processes, with the exception of employees whose employment is subject to a collective bargaining agreement.

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<sup>1</sup> The University has multiple obligations regarding employee sexual harassment and sex/gender-based harassment under various federal and state laws. Sexual and sex/gender-based prohibited conduct not meeting the Title IX regulatory standard is addressed under the Procedures for Resolution of Reports Against Employees Under Cornell University Policy 6.4 (Non-Title IX Prohibited Conduct).

We are a recognized employer and educator valuing AA/EEO, Protected Veterans, and Individuals with Disabilities.

Procedures for Resolution of Reports Against Employees Under Cornell University Policy 6.4 (Title IX Prohibited Conduct)

Effective Date: June 1, 2019

Last Updated: March 14, 2022

## Additional Protections and Remedies

In addition to the procedures available under University Policy 6.4, students and employees may also choose to pursue legal remedies under the state and federal laws listed below:

- New York Human Rights Law

A complaint can be filed with the State Division of Human Rights, <https://dhr.ny.gov/contact-us>, within three (3) years of the alleged discrimination.

A complaint may also be filed in New York Supreme Court within three (3) years of the alleged discrimination.

- Title VII of the Civil Rights Act of 1964

The Equal Employment Opportunity Commission (“EEOC”) is responsible for enforcement of the federal law prohibiting employment discrimination, Title VII. An individual can file with the EEOC anytime within 300 days from the alleged discrimination.

For more information, visit: [www.eeoc.gov](http://www.eeoc.gov).

- Title IX

The Office for Civil Rights, the United States Department of Education is responsible for enforcement of Title IX. For more information: [OCR@ed.gov](mailto:OCR@ed.gov) or (800) 421-3481.



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# 1 EMPLOYEES UNDER THESE PROCEDURES

An employee is a faculty member (defined as a person who holds appointment to an academic title (as specified in the Bylaws of Cornell University, Article XVII)) or a staff member (defined as an employee of Cornell University who is not a faculty member). A graduate or undergraduate teaching or research assistant is treated as an “employee” for the purposes of these procedures for reports or Formal Complaints arising out of performance of those academic assignments.

In situations where the respondent is both a student and an employee, the appropriate University official<sup>2</sup> will determine which procedures apply based on the circumstances surrounding the alleged conduct as determined in their sole discretion. Further, when the respondent is both a student and an employee, the respondent may be subject to any of the sanctions applicable to students or employees under Policy 6.4.

## 2 DEFINITION OF FORMAL COMPLAINT AND REPORT

A “Formal Complaint” of prohibited conduct is a written document signed by a complainant alleging specific prohibited conduct by a respondent and initiating the resolution process under the Procedures, or a similar written document signed by a university official on behalf of the university.

A “report” of prohibited conduct differs from a Formal Complaint. A report occurs when OIETIX becomes aware of an alleged incident of prohibited conduct.

## 3 UNIVERSITY RIGHT TO ACT

The University will take reasonable and necessary actions to prevent discrimination and harassment; to take appropriate action when it learns directly or indirectly of conduct that might violate this policy; and to respond promptly and thoroughly to any such information, whether or not a Formal Complaint is filed under these procedures.

## 4 DESIGNATION AS COMPLAINANT AND RESPONDENT

A person who is the subject of a report or initiates a Formal Complaint of prohibited conduct under these procedures will be designated as the “complainant.” An employee against whom such a report or Formal Complaint has been made will be designated as the “respondent.” Both the complainant and respondent are referred to as “party” or “parties” throughout these procedures.

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<sup>2</sup> Throughout these procedures, various University officials, such as the Title IX Coordinator, is assigned responsibility for performing specific functions. Named officials are authorized to delegate responsibility to other appropriate University officials and non-university consultants except where such delegation contravenes University policy. Additionally, named officials and their designees may consult with appropriate University officials, the Office of University Counsel, and subject-matter experts.



A person who is the subject of a report and does not wish to initiate a Formal Complaint is called a “non-party complainant” when the Title IX Coordinator initiates a Formal Complaint on the University’s behalf (See Section 12.2.2). During the investigation, adjudication, and appeal of the Formal Complaint, non-party complainants are treated as witnesses - not as parties - to the Formal Complaint, with limited exceptions. Non-party complainants may have an advisor and support person present at all meetings with OIETIX. Additionally, non-party complainants may submit impact/mitigation statements prior to the Hearing. (See Section 23 of these Procedures (“Hearings”).)

A non-party complainant will not be permitted to review the Investigative Report or Record, make pre-Hearing submissions, observe the respondent or witnesses’ testimony at the Hearing, pose follow-up questions or have their advisor conduct cross-examination, or appeal the determination of the Hearing Panel. The agreement of a non-party complainant is not necessary to resolve a University Complaint via Alternate Resolution.

Supportive Measures are available to all complainants, regardless of whether they initiate a Formal Complaint, and respondents in accordance with Section 19 of these Procedures (“Supportive Measures and Temporary Suspensions”).

## **5 ACADEMIC FREEDOM AND FREEDOM OF SPEECH AND EXPRESSION**

Nothing in these procedures shall be construed to abridge academic freedom and inquiry, principles of free speech and expression, or the university’s educational mission.

For the purposes of these procedures, academic freedom is defined by the Statement on Academic Freedom and Responsibility adopted by the University Faculty on May 11, 1960, which provides:

Academic Freedom for the Faculty means: Freedom of expression in the classroom on matters relevant to the subject and the purpose of the course and of choice of methods in classroom teaching; from direction and restraint in scholarship, research, and creative expression and in the discussion and publication of the results thereof; to speak and write as a citizen without institutional censorship or discipline. . .

Academic freedom is valued very highly at Cornell, and the University Faculty defends it tenaciously; nevertheless, the same University Faculty is disinclined to see the concept abused. Academic freedom does not imply immunity from prosecution for illegal acts of wrongdoing, nor does it provide license for faculty members to do whatever they choose.

Based on the protections afforded by academic freedom, speech and other expression occurring in the context of instruction or research will not be considered prohibited conduct under Policy 6.4 unless this speech or expression meets the definition of sexual and sex/gender-based harassment. (See Section 6.4). Employees have the right to communicate freely outside of the scope of their Cornell employment in their capacity as private citizens, and such speech or expression will not be considered prohibited conduct unless it meets the jurisdictional requirements set forth herein, as well as the definition of sexual and sex/gender-based harassment. (See Section 6.4).



## 6 DEFINITIONS OF PROHIBITED CONDUCT

### 6.1 Attempting to Commit Prohibited Conduct

A person attempts to commit prohibited conduct if, with the intent to commit such conduct, that person engages in conduct directly tending toward completion of the prohibited conduct.

### 6.2 Dating and Domestic Violence

Dating and domestic violence is any intentional act or threatened act of violence against the complainant committed by (1) a person who is or has been in a social relationship of a romantic or intimate nature with the complainant<sup>3</sup>; (2) a current or former spouse or intimate partner; (3) a person with whom the complainant shares a child; (4) anyone who is considered a respondent under the domestic or family violence laws of New York.

Dating and domestic violence also includes behavior that seeks to establish power and control over the complainant by causing the complainant to fear violence to themselves or another person. Such behavior may take the form of harassment, property damage, intimidation, and violence or a threat of violence to one's self (i.e., the respondent) or a third party. It may involve one act or an ongoing pattern of behavior.

### 6.3 Retaliation

Retaliation is adverse action taken against an individual with the purpose of interfering with an individual's rights under these procedures, including for making a good-faith report of prohibited conduct, for participating in any investigation, proceeding, or hearing, or for refusing to participate in an investigation, proceeding or hearing under these procedures. Retaliation may include intimidation, threats, coercion, discrimination, or adverse employment or educational actions. Retaliation may be found even when an underlying report made in good faith was not substantiated. Retaliation may be committed by the respondent, the complainant, or any other individual or group of individuals. Retaliation does not include good-faith actions pursued in response to a report of prohibited conduct.

### 6.4 Sexual and Sex/Gender-Based Harassment

Sexual Harassment and Sex/Gender-Based Harassment is unwelcome conduct on the basis of sex/gender, sexual orientation, gender identity, or gender expression when the conditions outlined in (1) or (2), below, are present.

1. An employee conditions the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct (often referred to as "quid pro quo")

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<sup>3</sup> Consistent with the Violence Against Women Act (VAWA), for reporting purposes under the Clery Act, the University will evaluate the existence of an intimate relationship based upon the complainant's statement, taking into consideration the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.



harassment), including an attempt or solicitation of an unwelcome “prohibited relationship” as defined in Cornell Policy 6.3, Consensual Relationships.

2. Such conduct creates a hostile environment. A hostile environment is determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University’s education programs or activities. Such conduct includes sexual advances, requests for sexual favors, or other unwanted conduct of a sexual or non-sexual nature, which may include acts of aggression, intimidation, or hostility, whether verbal, nonverbal, graphic, physical, or otherwise.

In evaluating whether a hostile environment exists, the University will consider a number of factors, including, but not limited to:

- The frequency, nature, and severity of the conduct;
- Whether the conduct was physically threatening;
- The effect of the conduct on the complainant’s mental or emotional state;
- How the conduct affected the terms, conditions or privileges of employment or education;
- Whether the conduct was directed at more than one person;
- Whether the conduct arose in the context of other discriminatory conduct;
- Whether there is a power differential between the parties; and
- Whether the conduct implicates concerns related to academic freedom or protected speech.

Based on individual facts and circumstances, the following may be examples of sexual and sex/gender-based harassment:

- Discussing someone else’s or one’s own personal sexual fantasies, preferences or history;
- Unwelcome touching of a person's body, including massaging;
- Repeatedly asking for a date from a person who has communicated they are not interested;
- and/or creating a list that ranks co-workers’ attractiveness or sexuality.

This list is not meant to be exhaustive, and whether these actions constitute sexual harassment may depend of a number of factors around the context of the conduct, including the relationship between the parties.

Typically, a single verbal comment will not be considered sufficiently “severe.”

Because of protections afforded by academic freedom, speech and other expression occurring in the context of instruction or research will not be considered sexual or sex/gender-based harassment unless this speech or expression also meets one or both of the following criteria:

- it is meant to be either abusive or humiliating toward a specific person or persons, or
- it persists despite the reasonable objection of the person or persons targeted by the speech.

## **6.5 Sexual Assault**

Sexual assault is (1) sexual intercourse or (2) sexual contact (3) without affirmative consent.

1. **Sexual intercourse**: Sexual intercourse means any penetration, however slight, with any object or body part, as follows: (a) penetration of the vulva by a penis, object, tongue, or finger; (b) anal



penetration by a penis, object, tongue, or finger; and (c) any contact, no matter how slight, between the mouth of one person and the genitalia of another person.

2. **Sexual contact:** Sexual contact means intentional sexual touching, however slight, with any object or body part, whether directly or through clothing, as follows: (a) intentional touching of the lips, breasts, buttocks, groin, genitals, inner thigh, or anus or intentionally touching another with any of these body parts; (b) making another touch anyone or themselves with or on any of these body parts; and (c) intentional touching of another's body part for the purpose of sexual gratification, arousal, humiliation, or degradation.
3. **Affirmative consent:** Affirmative consent is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression.

The following are principles that apply to the above definition of affirmative consent:

- Consent to any sexual act or prior consensual sexual activity does not necessarily constitute consent to any other sexual act.
- Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
- Consent may be withdrawn at any time.
- When affirmative consent is withdrawn or can no longer be given, sexual activity must stop.
- A person is incapable of affirmative consent when they are:
  - Less than seventeen years of age;
  - Mentally disabled (a person is mentally disabled when their normal cognitive, emotional, or behavioral functioning renders them incapable of appraising their conduct); or
  - Incapacitated.
- A person is incapacitated when they lack the ability to choose knowingly to participate in sexual activity.
  - A person is incapacitated when they are unconscious, asleep, involuntarily restrained, physically helpless, or otherwise unable to provide consent.
  - Someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent depending on the level of intoxication.
  - Affirmative consent cannot be gained by taking advantage of the incapacitation of another. In evaluating responsibility in cases of alleged incapacitation, the fact finder asks two questions: (1) did the respondent know that the complainant was incapacitated? If not, (2) should a sober, reasonable person in the respondent's situation have known that the complainant was incapacitated? If the answer to either of these questions is "yes," affirmative consent was absent.
  - If the fact finder determines based on a preponderance of the evidence that both parties were incapacitated, the person who initiated the sexual activity alleged to be nonconsensual due to incapacity is at fault.
- Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.
  - Examples of coercion and intimidation include using physically or emotionally manipulative conduct against the complainant or expressly or implicitly threatening the



complainant or a third party with negative actions that would compel or induce a reasonable person in the complainant's situation to engage in the sexual activity at issue. Examples of sexual coercion include statements such as "I will ruin your reputation," or "I will tell everyone," or "your career (or education) at Cornell will be over" or "I will post an image of you naked."

- Examples of force or a threat of harm include using physical force or a threat, express or implied, that would place a reasonable person in the complainant's situation in fear of physical harm to, or kidnapping of, themselves or another person.

Sexual Assault can also be nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

## **6.6 Stalking**

Stalking is engaging in a course of conduct directed at a specific person that would cause a reasonable person to (a) fear for their safety or the safety of others or (b) suffer substantial emotional distress.

- Course of conduct means two or more acts, including but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- Reasonable person means a reasonable person under similar circumstances and with similar identities to the complainant.<sup>4</sup>
- Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

## **7 EFFECTIVE DATE OF THESE PROCEDURES**

The effective date of these procedures is June 1, 2019.

The definitions of prohibited conduct in existence at the time of the alleged conduct will be used. However, the procedures in effect at the time a Formal Complaint is signed will be used to investigate and resolve the Formal Complaint, regardless of when the alleged conduct occurred.

## **8 APPLICATION OF UNIVERSITY POLICIES AND PROCEDURES**

### **8.1 Appropriate Procedures under Policy 6.4**

The University will take reasonable and necessary actions to prevent discrimination and harassment; to take appropriate action when it learns directly or indirectly of conduct that might violate this policy; and

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<sup>4</sup> This definition is consistent with VAWA.



respond promptly and thoroughly to such information, whether or not a Formal Complaint is filed under these procedures.

The University will determine which procedures under Policy 6.4 apply and direct the report or formal complaint accordingly with appropriate notice and information to the complainant(s) and as appropriate, the parties. To make this determination, the University will consider the status of the respondent and evaluate whether the report or formal complaint concerns an allegation(s) of prohibited conduct that falls under the 2020 Federal Title IX definitions and jurisdictional requirements to be addressed under these procedures or non-Title IX prohibited conduct to be addressed under the separate procedures governing such cases.

For more information, visit: <https://titleix.cornell.edu/procedures/>.

## **8.2 Allegations of Violations of other University Policy**

If a party submits a report or formal complaint that alleges a violation of another University policy, the Provost when the respondent is a faculty member or the Vice President and Chief Human Resources Officer when the respondent is a staff member, will determine how these allegations will be handled, such as, but not limited to, incorporated in an investigation under these procedures or referring the allegations of the other policy violation to the proper University official. The parties will be notified of the determination. These determinations are not subject to further appeal or review.

## **9 JURISDICTION**

These procedures will apply when an employee's alleged prohibited conduct occurred in the University's education program or activity (as defined in the policy) against an individual in the United States. At the time of the filing of a formal complaint, the complainant must be participating in or attempting to participate in the University's education program or activity.<sup>5</sup>

All actions by an employee that involve the use of the University computing and network resources from a remote location, including but not limited to accessing email accounts, will be deemed to have occurred on campus.

A jurisdictional challenge shall be deemed waived if not raised by the appeal stage under these Procedures.

## **10 TIME LIMIT TO FILE FORMAL COMPLAINTS**

Formal complaints should be filed under these procedures within three (3) years of the date of the alleged incident, or in the case of an alleged continuing course of conduct, from the date of the last act alleged. In

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<sup>5</sup> These procedures apply to all units of the University except for Weill Cornell Medicine, which will administer Policy 6.4 under Weill Cornell Medicine procedures.



most situations involving complaints filed later than this time frame, a Formal Complaint will be considered untimely. The University, however, may elect to investigate a report at any time or adjudicate a Formal Complaint when the respondent remains an employee, when OIETIX, in consultation with other administrators as appropriate, determines that an investigation and/ or a Formal Complaint is warranted to achieve the community-protective and ethical goals of Policy 6.4 and that resolution under these procedures is practically feasible.

The University's decision to pursue or not pursue a Formal Complaint when a Formal Complaint is made more than three (3) years after the date of the alleged incident is not subject to appeal by any party.

This statement of the University's commitment to investigate and address complaints of prohibited conduct under this policy for a period longer than is otherwise set under relevant state or federal laws does not constitute a waiver of any statute of limitations or defenses that might be applicable to the University under state or federal laws.

## 11 COMPUTATION OF DEADLINES

In computing any time period specified in these procedures, the day of the event, act, or default that initiates the period will be excluded.

## 12 THE UNIVERSITY'S RESPONSE TO A REPORT OF PROHIBITED CONDUCT

### 12.1 Initial Assessment

Upon receipt of a report of alleged prohibited conduct, the Title IX Coordinator<sup>6</sup> will make an initial assessment of the reported information and respond to any immediate health or safety concerns raised by the report. The steps in an initial assessment vary based on whether the identity of the complainant is known.

This initial assessment will include whether the reported information is subject to these procedures, the separate procedures for non-Title IX prohibited conduct, or neither, and an analysis of whether immediate reasonable steps have been taken or should be recommended to the unit or college to address the concerns raised by the report.

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<sup>6</sup> Throughout these procedures, various University officials, such as the Title IX Coordinator, are assigned responsibility for performing specific functions. Named officials are authorized to delegate responsibility to other appropriate University officials and non-university consultants except where such delegation contravenes University policy. Additionally, named officials and their designees may consult with appropriate University officials, the Office of University Counsel, and subject-matter experts.



These reasonable steps are determined on a case-by-case basis and are dependent on the conduct alleged and an evaluation of the work environment. The reasonable steps could include, for example, a separation of the parties, including a change in assignment, shift, or work location or administrative leave. Reasonable steps may also include a recommendation to the responsible unit and/or human resource professionals that they offer counseling and/or training for the affected individuals. These immediate reasonable steps do not preclude additional Supportive Measures or the complainant's or the University's pursuit of a resolution under these procedures.

### ***12.1.1 Where the Complainant's Identity Is Known***

Where the identity of the complainant is known, the Title IX Coordinator will ensure that the complainant receives a written explanation of all available resources and options and an opportunity to meet promptly to discuss those resources and options. In the initial assessment and meeting or correspondence with the complainant, the Title IX Coordinator will, as applicable:

- Assess the complainant's safety and well-being and offer the University's support and assistance through available resources;
- Inform the complainant that the Title IX Coordinator will maintain the complainant's privacy to the greatest extent possible and disclose information only as necessary pursuant to these procedures;
- Inform the complainant of their right to seek medical treatment (including a sexual assault forensic examination) and explain the importance of obtaining evidence and preserving forensic and other evidence;
- Inform the complainant of their right to contact law enforcement, be assisted by University officials in contacting law enforcement, or decline to contact law enforcement, and their right to seek a protective order;
- Inform the complainant that the criminal justice system uses different standards of proof and evidence than these procedures and that any questions about whether the reported prohibited conduct constitutes a penal law violation should be addressed by law enforcement;
- Inform the complainant about University and community resources, including counseling, health, and mental health services; victim advocacy; procedural advocacy; legal resources; visa and immigration assistance; student financial aid; and other resources both on campus and in the community, and how to request or contact such resources;
- Inform the complainant of the right to seek appropriate and available Supportive Measures and how to request such measures and consider the complainant's wishes with respect to Supportive Measures with or without the filing of a formal complaint. (See Section 19 "Supportive Measures and Temporary Suspensions");
- Ensure the complainant is aware of their right to an advisor;
- Inform the complainant of the right to file a Formal Complaint and seek resolution under these procedures; provide the complainant with an overview of these procedures, including a supportive response and Alternate Resolution (where appropriate); and inform the complainant



of the right to withdraw a Formal Complaint at any time and to decline or discontinue resolution under these procedures at any time, but that declining to participate in an investigation and/or the adjudicatory process under these procedures may limit the University's ability to investigate meaningfully and respond to a report of prohibited conduct;

- As possible and appropriate, ascertain the complainant's preference for pursuing formal resolution, Alternate Resolution, or a supportive response, or none under these procedures, and discuss with the complainant any concerns or barriers to participating in any investigation and resolution process under these procedures;
- Explain that the University prohibits retaliation, that retaliation constitutes prohibited conduct under these procedures, and that the University will take appropriate action in response to any act of retaliation;
- If applicable, inform the complainant of their rights afforded under the *Student Bill of Rights & Your Rights Statement*; and
- Communicate with appropriate University officials to determine whether the report triggers any Clery Act obligations, including the issuance of a timely warning, and take steps to meet those obligations.

### ***12.1.2 Where the Complainant's Identity Is Unknown***

Where a report is filed but the identity of the complainant is unknown, the Title IX Coordinator will assess the nature and circumstances of the report, including whether it provides information that identifies the potential complainant, the potential respondent, any witnesses, and/or any other third party with knowledge of the reported incident, and take reasonable and appropriate steps to respond to the report of prohibited conduct consistent with applicable federal and state laws and these procedures.

## **12.2 The University's Actions Following an Initial Assessment**

Upon completion of the Initial Assessment, the Title IX Coordinator will determine the course of action under these procedures as follows:

### ***12.2.1 Where the Complainant Seeks Resolution under These Procedures***

In any case where the complainant reports prohibited conduct and requests resolution under these procedures, the Title IX Coordinator will promptly conduct an initial assessment and as appropriate, initiate an investigation. This process begins with the complainant making a signed, written Formal Complaint.

### ***12.2.2 Where the Complainant Requests That No Formal Complaint Be Pursued Under These Procedures***

Where the complainant does not wish to pursue a Formal Complaint under these procedures, the University will honor the complainant's wishes unless doing so would not adequately mitigate the risk of harm to the complainant or other members of the University community or doing so impacts the



University's ability to provide a safe and non-discriminatory environment for all members of the University community, including the complainant.

The Title IX Coordinator will consider the following factors, among others, when determining whether to honor the complainant's wish that no resolution be pursued under these procedures:

1. Whether the respondent has a history of violent behavior or is a repeat offender;
2. Whether the incident represents escalation in unlawful conduct by the respondent from previously noted behavior;
3. The increased risk that the respondent will commit additional acts of violence;
4. Whether the respondent used a weapon or force;
5. Whether the complainant is a minor;
6. Whether the University possesses other means to obtain evidence such as security footage; and
7. Whether available information reveals a pattern of perpetration at a given location or by a particular group.

Regardless of whether the complainant chooses to file or participate in a Formal Complaint, the Title IX Coordinator will assist the complainant who is a student or employee of the University with reasonable and available Supportive Measures, which may include academic, housing, transportation, employment, and other accommodations. For a complainant who is not a student or employee of the University, the Title IX Coordinator may have a limited ability to provide Supportive Measures. The Title IX Coordinator will provide reasonably available Supportive Measures on a case-by-case basis. (See Section 19 "Supportive Measures and Temporary Suspensions").

Where no Formal Complaint has been filed and a Supportive Measure impacts the respondent, the respondent will be provided with written notice of the report, which includes, as known, the date, time, and location of the alleged prohibited conduct and the underlying factual allegations, including the identity of the complainant (if known). Therefore, certain Supportive Measures may not be available if the complainant wishes to maintain anonymity.

Where the complainant declines to participate in an investigation, the University's ability to meaningfully investigate and respond to a report may be limited.

### **12.2.2.1 University Determination That the Complainant's Request(s) Can Be Honored**

If the Title IX Coordinator determines that the University can honor the complainant's request that no Formal Complaint be pursued under these procedures, the University may nevertheless take other appropriate steps designed to eliminate the reported prohibited conduct, prevent its recurrence, and address its effects on the complainant and the University community. Those steps may include offering the complainant reasonable and available Supportive Measures, conducting targeted prevention and awareness training, and/or providing or imposing other remedies tailored to the circumstances.



The complainant may later choose to pursue a Formal Complaint within the time limits for filing a Formal Complaint under these procedures, subject to whether the University has already investigated and adjudicated a Formal Complaint initiated by the University.

Upon receipt of new or additional information, the Title IX Coordinator may reconsider the complainant's request that no Formal Complaint be pursued under these procedures and initiate the resolution process, as explained directly below.

#### **12.2.2.2 University Determination That the Complainant's Request(s) Cannot Be Honored**

Where the Title IX Coordinator determines that the University cannot honor the complainant's request that no Formal Complaint be pursued under these procedures, the Title IX Coordinator will promptly initiate a signed, written Formal Complaint on behalf of the University.

The Title IX Coordinator will notify the complainant that the University intends to proceed with a Formal Complaint and will take immediate action as necessary to protect and assist the complainant.

The Title IX Coordinator will make reasonable efforts to protect the privacy of the complainant. However, typically, the complainant's identity would have to be disclosed as part of the University's investigation.

The complainant is not required to participate in any proceedings that follow. However, if the complainant declines to participate in an investigation and/or the adjudicative process under these procedures, the University's ability to investigate meaningfully and respond to a report of prohibited conduct may be limited.

The complainant may not later choose to file a Formal Complaint under these procedures after a Formal Complaint initiated by the University is resolved.

## **13 NOTICE TO COMPLAINANT AND RESPONDENT OF UNIVERSITY ACTIONS**

The Title IX Coordinator will promptly inform the complainant of any actions undertaken by the University that will directly impact the complainant, including the filing of a Formal Complaint.

The Title IX Coordinator will promptly inform the respondent of any actions undertaken by the University that will directly impact the respondent, including the filing of a Formal Complaint or the imposition of Supportive Measures that would directly impact the respondent, and provide an opportunity for the respondent to respond to such action(s). (See Section 19 "Supportive Measures and Temporary Suspensions").

## **14 ADVISORS AND SUPPORT PERSONS**

At all stages under these procedures, both the complainant and respondent will be afforded the assistance of an advisor provided by the University to assist and advise the party.



As an alternative or in addition to utilizing an advisor offered by the University, each party has the right to select and consult with an advisor of their own choosing.

Both the complainant and respondent also have the right to a support person of their choice to provide emotional support to the party.

Advisors and support persons may be any person, including an attorney.

Advisors and support persons may accompany the party to all meetings, such as investigative interviews and are not to interfere with meetings or proceedings. Advisors and support persons may not speak on the party's behalf at any time with limited exception for cross-examination conducted by advisors at the hearing.

Throughout the proceedings, advisors and support persons may also help the party prepare written submissions.

During hearings, advisors and support persons may confer with the party, and on the party's behalf, at the time and in the manner prescribed by the Hearing Chair and also may help the party prepare written submissions.

During the hearing, each party's advisor is permitted to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally.

Should a party not have an advisor who will be at the hearing to conduct cross-examination on their behalf, the University will provide an advisor aligned with the party's interest, for such purpose. A party should request in writing as soon as possible and at least 10 business days in advance of the hearing that the University provide an advisor for the hearing.

By accepting the role of advisor or support person, all advisors and support persons agree to comply with the rules and processes set forth in Policy 6.4 and these procedures, including rules regarding process privacy.

The University will not interfere with the parties' rights to have an advisor and support person of their choice and fully expects advisors and support persons to adhere voluntarily to Policy 6.4 and these procedures. In extreme cases, where the Title IX Coordinator or Hearing Panel Chair determines that an advisor's or support person's conduct undermines the integrity of Policy 6.4 or these procedures, the advisor or support person will be prohibited from continuing to serve as advisor or support person in that case. The affected party will be permitted a reasonable period of time to obtain a substitute advisor or support person.

## 15 WRITTEN SUBMISSIONS

For all written submissions permitted by these procedures, other than the written objections and requests specifically permitted during hearings, the documents must be submitted by the parties. Written submissions from an advisor, support person, or other individual made on behalf of a party, other than



the written objections and requests specifically permitted during hearings, will not be included in the investigative or hearing records.

Where a form is available at [titleix.cornell.edu](http://titleix.cornell.edu) for a written submission, the party must use the form for the submission. Where required by these procedures, the party must sign the written submission.

## **16 PRESERVATION OF INFORMATION AND TANGIBLE MATERIAL**

Preservation of information and tangible material relating to alleged prohibited conduct is essential for investigations under these procedures as well as law enforcement investigations. Therefore, all persons involved in these procedures, whether as the complainant, the respondent, or a witness, are encouraged, and all employees are required, to preserve all information and tangible material relating to the alleged prohibited conduct. Examples of evidence include electronic communications (e.g., email and text messages), photographs, clothing, and medical information.

The complainant's, the respondent's, or a witness's failure to preserve necessary evidence may affect the University's ability to gather relevant and reliable information, contact witnesses, investigate thoroughly, and respond meaningfully.

In the case of medical information, prompt examinations can be crucial to the collection of forensic or other medical evidence. Individuals who believe they have experienced sexual assault or other forms of prohibited conduct are strongly encouraged to seek immediate medical attention.

## **17 OBLIGATION TO PROVIDE TRUTHFUL INFORMATION**

At all stages of the process, all Cornell University community members are expected to provide truthful information. An employee who does not provide truthful information may be subject to discipline independent of the outcome of proceedings under this policy. This provision does not apply to reports made or information provided in good faith, even if the facts alleged are not later substantiated.

## **18 DUTY TO COOPERATE**

All members of the University community are expected to cooperate and participate in inquiries, investigations, and resolutions of reports and Formal Complaints of prohibited conduct under these procedures. However, the non-cooperation or non-participation of a party or witness cannot be the basis of adverse action or an adverse inference.



# 19 SUPPORTIVE MEASURES AND TEMPORARY SUSPENSIONS

## 19.1 Overview of Supportive Measures

Supportive Measures are non-disciplinary, non-punitive individualized services offered as appropriate and reasonably available, without fee or charge, to the complainant or respondent before, during or after the filing of a Formal Complaint or where no Formal Complaint has been filed. Supportive Measures are designed to accomplish a number of goals:

- to restore or preserve equal access to the University's education program or activity;
- to support and protect the safety of the complainant, the respondent, the University's educational environment, and the University community;
- to promote the goals of Policy 6.4;
- to deter retaliation; and
- to preserve the integrity of the investigation and resolution process pursuant to these procedures.

Supportive Measures might be in the form of support or restrictions upon one or both parties.

Restrictive Supportive Measures will be calibrated to address a perceived risk, but tailored to minimize to the extent possible the impact on the affected party or parties, whose underlying case of prohibited conduct has not yet been adjudicated on the merits.

Supportive Measures may be issued based upon a party's request or at the University's own initiative. In all instances, the University will, at its discretion, determine whether any given Supportive Measure is reasonable and appropriate.

Supportive Measures are available regardless of whether a Formal Complaint has been filed under these procedures.

Supportive Measures are available regardless of whether the complainant chooses to report the prohibited conduct to law enforcement.

Supportive Measures become effective when notice of the Supportive Measures is provided.

Where a Formal Complaint has been filed, typically, Supportive Measures will remain in place pending the resolution of the Formal Complaint.

Violations of Supportive Measures that are orders by a University official may constitute prohibited conduct under the Procedures for Resolution of Reports Against Employees Under Cornell University Policy 6.4 (Non-Title IX Prohibited Conduct).

## 19.2 Examples of Supportive Measures

Potential Supportive Measures include but are not limited to:

- assistance obtaining access to counseling, advocacy, or medical services;



- assistance obtaining access to academic support and requesting academic accommodations;
- changes in class schedules;
- assistance requesting changes in work schedules, job assignments, or other work accommodations;
- change in job assignment;
- changes in campus housing;
- safety escorts;
- educational conversations with parties;
- “No-contact” orders (curtailing or prohibiting contact or communications between or among individuals); and
- restrictive orders.

### **19.3 Issuance of Supportive Measures**

The Title IX Coordinator, in consultation with other administrators as appropriate, is responsible for issuing Supportive Measures, excluding imposition of temporary suspensions. In each case, the Title IX Coordinator will designate an appropriate individual in the respondent’s college or unit to be responsible for implementing the Supportive Measures.

Supportive Measures will be designed in a fair manner and narrowly tailored to minimize to the extent possible any restrictions on those affected.

In issuing Supportive Measures, the University will make reasonable efforts to communicate with any impacted party to address safety and emotional and physical well-being concerns.

Supportive Measures are not, in and of themselves, permanent resolutions under these procedures and they are not disciplinary actions. Rather, they are accommodations and protective actions taken by the University based on information known at the time that the Supportive Measures are issued.

Accordingly, the University has the discretion to issue, modify, or remove any Supportive Measure at any time additional information is gathered or circumstances change.

Supportive Measures do not appear on a party’s transcript or disciplinary record. A record of Supportive Measures is maintained in the Title IX Coordinator’s case file.

### **19.4 Requested Review of Decisions Regarding Supportive Measures (Excluding Imposition of Temporary Suspension from Employment and Temporary Suspension from Academic Enrollment / Student Status)**

Both parties may at any time request that the Title IX Coordinator issue, modify, or remove Supportive Measures based upon a change in circumstance or new information that would affect the necessity of any Interim Measures.



## **19.5 Temporary Suspension from Employment**

Once a Formal Complaint has been filed, in extraordinary circumstances, where immediate action is necessary to protect the complainant or any other individual, the Provost or Vice President and Chief Human Resources Officer, have the discretionary authority to suspend the respondent pending resolution of the underlying case.

In determining whether a Temporary Suspension is appropriate, the Provost or Vice President and Chief Human Resources Officer must determine that an immediate threat to the physical health or safety of the complainant or any other individual arising from the allegations underlying the Formal Complaint justifies such emergency removal of the respondent. The following factors, among others, should be considered:

- whether the respondent has a history of violent behavior or is a repeat offender;
- whether the incident represents escalation in unlawful conduct by the respondent from previously noted behavior;
- whether there are facts indicating a risk that the respondent will commit additional acts of violence; and
- whether the respondent allegedly used a weapon or force.

Temporary Suspension from employment of a faculty member must be done in accord with the process under the Trustee Dismissal/Suspension Policy and its protocol for issuing emergency suspensions unless or until that policy is amended to reflect the standard and process used by these procedures.

Suspension from employment may include the withdrawal of any or all University privileges and services, including utilization of University premises and facilities, class attendance, participation in examinations, as determined by the President or designee, Provost and Vice President and Chief Human Resources Officer. See also, University Policy 6.11.3, Employee Discipline.

Violations of Temporary Suspensions that are orders by a University official may constitute prohibited conduct under the Procedures for Resolution of Reports Against Employees Under Cornell University Policy 6.4 (Non-Title IX Prohibited Conduct).

## **19.6 Review of Temporary Suspension from Employment**

The respondent may at any time request that the Provost or Vice President and Chief Human Resources Officer modify or lift a Temporary Suspension from employment based upon a change in circumstance or new information that would affect the necessity of a Temporary Suspension from employment.

## **19.7 Temporary Suspension of Academic Enrollment / Student Status**

In addition to a temporary suspension from employment, the University may impose a temporary suspension from Academic Enrollment/Student Status in accord with the mechanism set forth in Section 16.6 of the Policy 6.4 Student Procedures entitled “Temporary Suspensions Pending Resolution.”



## **19.8 Review of Temporary Suspension of Academic Enrollment/Student Status**

A review of a temporary suspension from Academic Enrollment/Student Status will be conducted in accord with the mechanism set forth in Section 16.7 of the Policy 6.4 Student Procedures entitled “Review of Temporary Suspensions.”

## **19.9 Assistance with Orders of Protection**

Orders of Protection are court orders and, thus, the University is not able to issue them. However, the Cornell University Police Department (CUPD) (607-255-1111) will assist both the respondent and the complainant (or any member of the Cornell community impacted by an Order of Protection), by helping the parties understand the availability of an order, the potential content and parameters of an order, and the consequences for violating an order.

The CUPD will also assist a protected party in effecting arrest of an individual violating an Order of Protection, if doing so is within the jurisdiction of CUPD.

The Tompkins County Advocacy Center (607-277-5000) is a confidential resource in Ithaca that can also assist in obtaining a Family Court Order of Protection for complainants reporting an experience with dating or domestic violence.

## **20 PENDING CRIMINAL INVESTIGATIONS**

In addition to the University investigating potential Policy 6.4 allegations, CUPD or other law enforcement may investigate alleged criminal matters. In cases where there is a criminal investigation, the University process will run concurrently with such investigation. The University may grant temporary delays reasonably requested by law enforcement for evidence gathering.

## **21 RESOLUTION BY FORMAL COMPLAINT**

If there is no agreement to pursue an Alternate Resolution, or efforts to resolve the matter by Alternate Resolution are unsuccessful, the matter may be resolved pursuant to a Formal Complaint under these procedures.

### **21.1 Notice to Parties upon the Issuance of a Formal Complaint**

At the issuance of a Formal Complaint, the Title IX Coordinator will notify the complainant and the respondent, in writing, of the commencement of an investigation and provide both parties with a copy of the Formal Complaint, Policy 6.4, and these procedures. Such notice will:

- identify the complainant and the respondent;
- specify the alleged prohibited conduct and its date, time, and location, to the extent known;
- specify the basis for jurisdiction over the Formal Complaint;
- specify the factual allegations pertaining to the prohibited conduct;



- specify any sanctions that may be imposed, including the University’s transcript notation policy;
- identify the investigator;
- include information about the parties’ respective rights and obligations under Policy 6.4 and these procedures;
- inform the parties of their right to seek the assistance of an advisor provided by the University, a second advisor (including an attorney), and a support person for emotional support, all of whom may accompany the respective parties to meetings and proceedings;
- inform the parties of the range of available resources;
- explain the prohibition against retaliation; and
- instruct the parties to preserve any potentially relevant evidence, whatever its form.

## **21.2 Complainant May Withdraw the Formal Complaint**

The complainant may withdraw a Formal Complaint that they have filed at any time prior to resolution.

## **21.3 Dismissal of a Formal Complaint Based on Academic Freedom/Free Speech**

At any time after a Formal Complaint is filed, the Title IX Coordinator may dismiss a Formal Complaint and close a case where the Title IX Coordinator determines that dismissal of the Formal Complaint is warranted because the alleged prohibited conduct is protected by academic freedom and inquiry, principles of free speech and expression, or the university’s academic mission. Review of the Formal Complaint pursuant to this provision may be initiated by the Title IX Coordinator, at the request of the respondent, or by the Dean of the Faculty. The Title IX Coordinator and three faculty members from the Committee on Academic Freedom and Professional Status of the Faculty will make the decision. This decision is not subject to further review.

## **21.4 Dismissal of a Formal Complaint for Other Reasons**

The Title IX Coordinator may dismiss<sup>7</sup> a Formal Complaint and close a case where:

1. There is no jurisdiction under these procedures.
2. The facts set forth in the Formal Complaint do not constitute prohibited conduct under these procedures.
3. The complainant has failed or refused to cooperate with the investigation such that the investigator is unable to investigate despite reasonable measures, including where the complainant cannot be located, the complainant fails or refuses to be available for interviews or meetings, or the complainant fails to provide necessary information.

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<sup>7</sup> Where appropriate, the Title IX Coordinator may dismiss a Formal Complaint prior to the Notice of Formal Complaint to both parties.



4. The complainant notifies the Title IX Coordinator in writing that they would like to withdraw the Formal Complaint or any allegations therein.
5. The respondent is no longer employed by the University.
6. Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

If the Title IX Coordinator determines that a Formal Complaint should be dismissed the parties will receive a written decision explaining the reason for the dismissal. Upon dismissal based on (1) or (2) above, the Title IX Coordinator shall determine whether other procedures under Policy 6.4 may apply and include that determination in the written dismissal.

The aggrieved party must commence review of the proposed dismissal within ten (10) business days by submitting a letter explaining why the dismissal is believed to be erroneous, including any written evidence in support of their position. The materials should be submitted to the Title IX Coordinator who will forward them to the Hearing Panel and Hearing Chair (who provides guidance to the Hearing Panel but does not have a vote in a decision)

The Title IX Coordinator will also inform the other party that a request for review has been filed and provide a copy of the aggrieved party's letter and any supporting materials to the other party. The other party will be given an opportunity to respond in writing to the aggrieved party's request for review. This review may take place on the parties' submissions and does not require an in-person meeting or hearing.

The Hearing Chair in consultation with the Hearing Panel will establish a reasonable process and timeline for handling the matter.

The Hearing Panel will conduct the review based upon a standard of clearly erroneous, meaning that the Hearing Panel will not disturb the Title IX Coordinator's decision by substituting its own judgment for the judgment of the Title IX Coordinator.

If the Hearing Panel determines that the Title IX Coordinator's decision was clearly erroneous, the Formal Complaint will be reinstated.

If the Hearing Panel determines that the Title IX Coordinator's decision was not clearly erroneous, the Formal Complaint will be dismissed.

The Hearing Panel will provide a written decision to the parties and the Title IX Coordinator.

The decision of the Hearing Panel is final; there is no right to appeal.

## **21.5 The Parties' Participation in the Investigation**

Both the complainant and the respondent may decline to participate in the investigation. The University, however, may continue without a party's participation, reaching findings and issuing sanctions. Additionally, a party's decision not to participate in the investigation will limit the party's subsequent ability to participate in the investigation, as explained below.



### ***21.5.1 Declining to Participate in the Investigation***

If a party declines to participate in investigative interviews deemed necessary by the investigator, the party will forfeit the opportunity at the hearing to give a written opening statement, testify, and give oral and written closing statements.

Nonetheless, if a party who has so declined to participate in investigative interviews later seeks to participate in a hearing, upon a finding that there was a compelling reason for the nonparticipation, the Hearing Chair, upon the Chair's discretion, may permit the party to participate. If the Hearing Chair permits the party to participate in the hearing, the Hearing Chair will first reschedule or adjourn the hearing for the investigator to interview the party and, as necessary, conduct any follow-up investigation and supplement and revise the investigative record and report. The Hearing Chair will also re-open the pre-hearing submission process, if appropriate, so that the parties may respond to the new information.

### ***21.5.2 Declining to Attend or Participate in the Hearing***

Neither party is required to attend a hearing for the hearing to proceed. The party's advisor may question any witnesses and object to testimony. If, despite being notified of the date, time, and location of the hearing, either party is not in attendance, the hearing may proceed, and applicable sanctions may be imposed.

The parties are not required to testify at a hearing and the Hearing Panel will not draw a negative inference from a party's silence. However, where a party declines to testify or answer approved questions asked of them, the Hearing Panel's ability to hear information necessary to make an informed decision in that party's favor may be limited.

The decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the hearing or refusal to answer cross-examination or other questions.

## **21.6 Consolidation of Reports and Formal Complaints Under these Procedures**

Generally, at the discretion of the Title IX Coordinator, multiple reports or Formal Complaints under these procedures that are factually related will be joined in one investigation. Formal Complaints joined in one investigation may be joined in one hearing or resolved in separate hearings, as discussed below.

At the discretion of the Hearing Chair, in consultation with the investigator, multiple Formal Complaints, whether joined in one investigation or not, and multiple investigations under these procedures may be joined in one hearing if doing so is likely to result in reliable and more efficient outcomes without causing prejudice to a party or parties or confusion for the fact finders. In determining whether to consolidate, the Hearing Chair will provide the parties with an opportunity to explain their preferences for consolidated or severed hearings.

Multiple Formal Complaints and investigations may be so joined whether they involve single or multiple complainants or respondents. In all hearings involving multiple respondents, the Hearing Panel will consider singly the sanctions and remedies appropriate for each respondent.



## **21.7 Investigation of a Formal Complaint**

### ***21.7.1 Overview of Investigations of a Formal Complaint***

The investigation is designed to be timely, thorough, and impartial and to provide for a fair and reliable gathering of the facts. All individuals involved in the investigation, including the complainant, the respondent, and any third-party witnesses, will be treated with sensitivity and respect.

When the respondent is a member of the faculty, the Dean of Faculty will designate a faculty member to serve as a co-investigator. When the respondent is a staff member, the Vice President of Human Resources will designate a staff member to serve as a co-investigator. These co-investigators will be selected from pools of appropriately trained faculty and staff.

The investigation will generally include individual interviews of the complainant, the respondent, and relevant witnesses. Upon completion of the investigation, the investigator will prepare a final investigative record and an investigative report. The investigative record is a compilation of statements by the parties and witnesses as well as other evidence gathered by the investigator. The investigative report will explain the scope of the investigation and summarize the information gathered.

The complainant and the respondent will have an equal opportunity to participate in the investigation, including an equal opportunity to be heard, submit evidence, and suggest witnesses who may have relevant information. Specifically, during the investigation, each party will have the opportunity to:

- be interviewed by the investigator;
- review their own interview statements prior to the statements being distributed to the other party and included in a draft investigative record;
- provide evidence to the investigator;
- suggest witnesses to be interviewed by the investigator;
- propose questions to be asked of witnesses; and
- review a draft investigative record and comment on it, in writing, before the investigator finalizes the record and prepares an investigative report.

### ***21.7.2 Timeframe of and Time Limitations During the Investigation***

The investigation will be completed as expeditiously as possible. Any time the general timeframes for resolution outlined in these procedures will be delayed, the investigator will provide written notice to the parties of the delay, the cause of the delay, and an estimate of the anticipated additional time that will be needed as a result of the delay.

Throughout the investigation, both parties will receive reasonable notice of any meetings at which their attendance is requested, and the parties will be updated at regular intervals on the status of the investigation.

The investigator will establish reasonable time limits for the various stages of the investigation, including meetings and deadlines for any submissions or responses, and the parties must adhere to these time limits.



The parties may request reasonable extensions that will be granted at the discretion of the investigator. Extensions granted to one party will be granted to the other party. Delays simply to prolong the process will not be permitted, and failure to meet deadlines will result in forfeiture of a party's ability to participate in that aspect of the investigation. Written notice of the delay or extension and the reasons for the action will be provided to the parties.

If a party declines or fails to participate in a meeting or interview, provide evidence, or suggest witnesses, the party will have waived their right to do so upon the issuance of the final investigative record and report.

### ***21.7.3 Investigative Interview Process***

The investigator will gather information from the complainant, the respondent, and other individuals who have relevant information.

The parties will have the opportunity to request in writing witnesses they would like the investigator to interview and questions and topics they would like the investigator to ask witnesses, themselves, and the other party.

The investigator has the discretion to determine the relevance of any proffered witnesses, and, accordingly, the investigator will determine which witnesses to interview.

In general, the investigator will not consider relevant any witnesses who are offered solely for the purpose of providing evidence of a party's character.

Investigative interviews with the parties and any witnesses will be audio recorded.

At the start of an interview session, the investigator will inform an interviewee that the session is being audio recorded.

Parties and witnesses will receive copies of audio recordings and transcripts of their own interviews.

The parties will be provided with transcripts, but not audio recordings, of all witness and other party interviews.

The parties may listen to audio recordings of interviews of the other party and any witnesses during business hours at a secure and private campus location, with access facilitated by OIETIX.

All persons participating in the interview, including the parties, are prohibited from recording interviews.

In the event of a failure rendering an audio recording of an interview inaudible in whole or in part, the investigator will either reconstruct the interview with input from the interviewee or re-conduct the interview, as the investigator deems necessary. The reconstructed interview statement will become part of the investigative record. The failure to successfully record will not constitute grounds for appeal.



#### ***21.7.4 Evidentiary Materials***

The investigator will gather relevant available evidentiary materials, including physical evidence, documents, communications between the parties, and electronic records and media as appropriate. When the investigator requests evidence from a party or witness, they are expected to cooperate, consistent with the Duty to Cooperate.

The parties will have the opportunity to request in writing the evidentiary materials they would like the investigator to seek to obtain.

The investigator has the discretion to determine the relevance of any requested evidentiary materials, and accordingly the investigator will determine what evidentiary materials to seek to obtain.

In the event that irrelevant evidentiary materials are received during the investigation, the materials will be excluded from the investigative record. Those materials will become part of the appeal record in the event of an appeal (see section 24 below).

#### ***21.7.5 Expert Testimony and Materials***

If the investigator determines that expertise on a topic will assist the Hearing Panel in making its determinations, upon the investigator's own initiative or at the request of a party, the investigator may include in the investigative record medical, forensics, technological, or other expert testimony and materials (such as writings and recordings) that the investigator deems relevant and reliable.

The investigator has the discretion to determine the relevance and reliability of any expert testimony and materials, and, accordingly, the investigator will determine what, if any, expert testimony and materials will be included in the investigative record.

Requested expert testimony or materials not included in the investigative record will not be considered by the Hearing Panel.

The results of polygraph tests and other "lie-detection" techniques are inadmissible in the proceedings.

#### ***21.7.6 Evidence to be Excluded or Redacted from the Investigative Record***

The parties and witnesses should make all requests for exclusions and redactions to the investigator during the investigation prior to the issuance of the final investigative record and report.

Content falling into one of the four categories below can be redacted or excluded.

1. Prior Sexual History: Generally, during both the investigation and any hearing to determine responsibility, participants in this process may exclude evidence of their own prior sexual history with anyone other than the other party.
2. Past Findings: During both the investigation and any hearing to determine responsibility, participants in this process may exclude evidence of their own past employment/disciplinary findings. Such findings are admissible at the stage of the hearing for determining sanctions.



3. Mental Health Condition, Treatment and/or Diagnosis: Generally, during both the investigation and any hearing to determine responsibility, participants in this process may exclude evidence of their own mental health diagnosis and/or treatment.
4. Sensitive Personal Identifying Information and Medical Records: Throughout these proceedings, sensitive personal identifying information, such as Social Security numbers and irrelevant information contained in medical records, will be excluded. Upon the request of a party or witness, investigators may also redact or exclude other sensitive or private information, including, but not limited to: contact information and sensitive images (including images where an individual is nude or partially clothed).

In addition, there may be other information that is excluded or redacted under applicable law or these procedures. For example, information protected by legally recognized privilege would be excluded unless waived.

Any necessary exclusions or redactions are made by the investigator during the investigation and the Hearing Chair during the hearing process, which includes both content elicited at the hearing as well as content in the investigative record.

Excluded or redacted content not included in the investigative record will not be considered by the Hearing Panel.

#### ***21.7.7 Draft Investigative Record and the Parties' Review***

Upon completion of the investigation, the investigator will prepare and provide to the parties and their advisors an electronic or hard copy of a draft investigative record that will include:

- transcripts (but not audio files) of all interviews by the investigator with the parties and any witnesses; and
- copies of any documents, electronic records, media, and photographs or descriptions of physical materials collected during the course of the investigation.

As part of the investigative process, both parties have an opportunity to review and comment upon a draft investigative record before the investigator finalizes it and issues an investigative report.

The parties will have ten (10) business days to review the draft investigative record and submit in writing:

- comments about content such as factual inaccuracies the investigative record. A party's comments may not add content;
- requests for redaction;
- requests for inclusion of content deemed irrelevant or duplicative by the investigator;
- requests for additional meetings with the investigator; and
- requests for the investigator to conduct further investigation or questioning.

The parties' responses should not include arguments about why the Hearing Panel should find in their favor, these arguments are more appropriately made as part of the opening statement (See section 23.8.1).



The parties may request extensions that will be granted, if reasonable, at the discretion of the investigator. Any extension granted to one party will be granted to the other party.

Delays simply to prolong the process will not be permitted and failure to make submissions within ten (10) business days or any approved extensions, will result in a forfeiture of the right to do so later.

The parties' written comments and requests will become part of the final investigative record, except to the extent content is deemed subject to exclusion or redaction pursuant to these procedures. The investigator has discretion whether to conduct any additional requested meetings, interviews, or questioning.

The investigator will provide the parties with any and all evidentiary material used to supplement the draft investigative record before finalizing the investigative report and record. To the extent that new material is added after the draft investigative record, the parties may submit written comments limited to only the new material. These comments will be included in the investigative record. The investigator will consider all written comments to the evidentiary material prior to finalizing the investigative report.

## **21.8 Final Investigative Record and Investigative Report**

The investigative record is a compilation of the investigative interviews, evidentiary materials, and expert testimony and materials, if any.

The investigative report is not evidence. In the report, the investigator will explain the scope of the investigation and summarize the information gathered during the investigation. At their discretion, the investigator may identify contested and uncontested facts, highlight inconsistencies, and address relevancy of evidence. The investigator will not render an opinion on responsibility, other than to make a threshold determination as to whether there is sufficient evidence to proceed to a hearing (see section 24.9 below).

The final investigative record and final investigative report will be provided to the parties, their advisors, and the Hearing Panel at least ten (10) days prior to any hearing.

The investigator will consider the parties' written comments about all content prior to the completion of the investigative report.

## **21.9 Threshold Determination by Investigator and Review by Hearing Panel**

Upon completion of the investigation, the investigator will make a threshold determination as to whether there is sufficient evidence to advance the Formal Complaint to a hearing.

If the investigator concludes that when viewing the evidence in the light most favorable to the complainant, there is no reasonable basis to find that the respondent committed the alleged prohibited conduct, the investigator will make the threshold determination that there is not sufficient evidence to advance the Formal Complaint to a hearing. The proceedings will be terminated, the Formal Complaint dismissed, and the parties so notified.



If the investigator makes a threshold determination that there is not sufficient evidence to advance the Formal Complaint to a hearing, the investigator will provide the parties with a written decision explaining the threshold determination.

The complainant will be given an opportunity to seek review by a Hearing Panel. The complainant must request the review within ten (10) business days by submitting a letter explaining why they think the investigator's threshold determination is wrong including any evidence in support of their position. The materials should be submitted to OIETIX, who will forward them to the Hearing Panel and Hearing Chair (who provides guidance to the Hearing Panel but does not have a vote in a decision).

The respondent will be informed that a request for review has been filed and provided a copy of the complainant's letter and any supporting materials.

The Hearing Chair in consultation with the Hearing Panel will establish a reasonable process and timeline for handling the matter. The respondent will be given an opportunity to respond to the complainant's request for review.

The Hearing Panel will conduct its review based upon a standard of clearly erroneous, meaning that the Hearing Panel will not disturb the threshold determination by substituting its own judgment for the judgment of the investigator unless the Hearing Panel determines that the dismissal was clearly in error.

If the Hearing Panel determines that the dismissal was clearly erroneous, the Formal Complaint will be reinstated and resolved according to these procedures.

If the Hearing Panel determines that the dismissal was not clearly erroneous, it will affirm the dismissal.

The Hearing Panel will provide a written decision to the parties and the Title IX Coordinator.

The decision of the Hearing Panel is final; there is no right to appeal.

## **22 ALTERNATE RESOLUTION OF A FORMAL COMPLAINT**

At any time after a Formal Complaint has been filed and before a hearing commences, the parties may seek to resolve a report of prohibited conduct through Alternate Resolution, an administrative process. Alternate Resolution is available in every case in which the parties and the University as represented by the Title IX Coordinator, in consultation with the dean or unit head, or their designee as well as the provost in the case of a faculty respondent or the Vice President and Chief Human Resources Officer in the case of a staff respondent.

Participation in Alternate Resolution is entirely voluntary; the Title IX Coordinator will neither pressure nor compel either party to participate in the process or to agree to any specific terms.

Before the Title IX Coordinator approves the Alternate Resolution process or the terms of any Alternate Resolution, the Title IX Coordinator will determine that they have sufficient information about the matter to make these decisions.



The parties are strongly encouraged, although not required, to consult with their advisors and any support persons during the Alternate Resolution process.

If the process is terminated for any reason, the matter will be re-evaluated for resolution pursuant to the Formal Complaint resolution process under these procedures. For this reason, the investigator will not participate in Alternate Resolution.

The Title IX Coordinator will oversee the Alternate Resolution process and have access to all University records in the matter, including any records or reports prepared during an investigation.

The Title IX Coordinator will consult separately with both parties and recommend to the parties the terms of a potential Alternate Resolution agreement. Such terms may include, but are not limited to, any sanctions or remedies that could be imposed by a Hearing Panel after a hearing under these proceedings.

Both parties must agree to the terms before an Alternate Resolution agreement becomes effective.

At any time before a written agreement is effective (see below), the complainant or the respondent may withdraw from the Alternate Resolution process, and the Title IX Coordinator may also, at their discretion, terminate the process.

If both parties are satisfied with the Title IX Coordinator's recommendation, the matter will be resolved with a written agreement.

The Title IX Coordinator will provide each party, separately, with a copy of the proposed agreement for the party to review, sign, and return.

Once a party has returned the signed agreement to the Title IX Coordinator, the party has two (2) business days to reconsider and withdraw from the agreement by notifying the Title IX Coordinator in person or in writing.

Within the two (2) business days, if either party withdraws from the agreement, the matter would be returned for resolution of the Formal Complaint.

After the two (2) business days, if neither party withdraws, the terms of the agreement will become effective and the Title IX Coordinator will promptly notify both parties in writing that the agreement is final.

A copy of the Alternate Resolution will be provided to the respondent's unit or college and placed in the respondent's personnel file.

If the respondent also is a student and agrees to an Alternate Resolution that provides for a suspension, withdrawal, or dismissal (i.e., expulsion) from the University, there will be a transcript notation consistent with University policy.

Once the agreement is effective, the parties may not appeal the agreement and the complainant may not seek to refile the Formal Complaint absent new allegations of misconduct. The parties are expected to honor and comply with the terms of the Alternate Resolution. Noncompliance may be subject to proceedings under the Campus Code of Conduct or other disciplinary measures, as applicable.



If the process is terminated and the matter resolved pursuant to the Formal Complaint resolution process, neither the Title IX Coordinator nor the parties will disclose to the Hearing Chair, Hearing Panel, or Appeal Panel either the fact that the parties had participated in the Alternate Resolution process or any information learned during the process. While the parties are exploring Alternate Resolution, the investigation will pause, and the time spent pursuing resolution in this way will not count toward the investigation time limit.

There are two available forms of Alternate Resolution: (1) Restorative (“Informal”) Resolution, and (2) Negotiated (“Formal”) Resolution.

## **22.1 Restorative (“Informal”) Resolution**

The purpose of a Restorative Resolution is for the parties to agree on a set of remedies. Upon successful completion of those remedies, the formal complaint will be withdrawn and may not be refiled. Such remedies may include:

- Impact Letter;
- Apology Letter;
- Directed Study;
- Reflection Paper; and
- Other forms of Restorative/Transformative Justice.

Informal Resolution is not available to resolve allegations that an employee sexually harassed a student, which includes quid pro quo harassment, hostile environment harassment, dating and domestic violence, sexual assault, and stalking.

## **22.2 Negotiated (“Formal”) Resolution**

As a necessary precondition of a Negotiated Resolution, the Respondent must accept responsibility for all or part of the alleged prohibited conduct. The parties will then have an opportunity to negotiate with Title IX Coordinator what they believe the appropriate sanction should be. In support of their position, parties are encouraged to submit impact/mitigation information they believe the Title IX Coordinator should consider in evaluating any sanction.

The Title IX Coordinator has the discretion to propose other terms for the resolution that may be appropriate to address the prohibited conduct for which the respondent has accepted responsibility.

# **23 HEARINGS**

## **23.1 Overview of Hearing Process**

Findings of responsibility and determinations regarding sanctions and remedies are made through a hearing process conducted by a three (3) member Hearing Panel and a non-voting Hearing Chair.

The hearing is intended to provide the parties with a fair opportunity to present relevant information to the Hearing Panel and enable the Hearing Panel to make informed decisions regarding responsibility and sanctions/remedies.

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The parties are entitled to provide brief written opening statements and oral and written closing statements and to testify.

The parties will have the opportunity to submit a written or recorded Impact/Mitigation Statement, which may be submitted up to the start of the hearing.

Throughout the hearing, the parties with their advisor(s) and support person, if applicable, will be in separate rooms.

The parties may not directly address each other during the Hearing.

### **23.2 Presumption of Non-Responsibility, Burden of Proof, and Standard of Proof**

The respondent will be presumed “not responsible” unless and until a Hearing Panel determines the respondent is responsible. The University bears the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility.

The Hearing Panel will determine whether the respondent is responsible by a majority vote using a preponderance of the evidence standard. This means that to find the respondent responsible for any prohibited conduct, a majority of the Hearing Panel must be satisfied, based upon the evidence presented, that it is more likely than not that the respondent committed all of the elements of the alleged prohibited conduct. If the Hearing Panel does not find the respondent responsible for any prohibited conduct subject to resolution under these procedures under Policy 6.4 or any supplemental jurisdiction, it will dismiss the case. If the Hearing Panel finds that the respondent is responsible for any prohibited conduct subject to resolution under these procedures, it will consider appropriate sanctions and remedies.

### **23.3 Positions of Hearing Panel and Hearing Chair**

The Hearing Panel will include trained faculty and staff members selected through an appropriate process established in advance by the University. In any case involving a faculty member respondent, panel members from the faculty will comprise the majority of the panel members. In a case involving a staff member respondent, staff panel members will comprise the majority of the panel members.

The position of Hearing Chair will be filled through an appropriate process established in advance by the University.

The Hearing Chair and Hearing Panel members will receive annual training as required by law.

The Hearing Chair will provide guidance to the Hearing Panels and serve as a gatekeeper by making evidentiary and procedural rulings both prior to and during the hearing.

The Hearing Chair will draft the Hearing Panel decision, reflecting the Hearing Panel’s findings of fact and rationales for their determinations regarding both responsibility and sanctions and remedies. The Hearing Chair will obtain the Hearing Panel’s approval before issuing a written decision.

Given this significant role, the Hearing Chair will be non-voting.



## **23.4 Notice of Hearing**

At the completion of an investigation, if a case is referred to a Hearing Panel for a hearing, a Notice of Hearing will be sent to the parties as soon as practicable. The notice will include the charges at issue; a brief summary of the alleged prohibited conduct; and, if determined, the name of the Hearing Chair, the Hearing Panel members, and the date, time, and place of the hearing .

If the notice does not include the name of the Hearing Chair, Hearing Panel members, or the date, time, and location of the hearing, the parties will be so notified, in writing, at a later time, prior to the hearing.

All efforts will be made to provide the Notice of Hearing no later than seven (7) business days prior to the hearing and to schedule the hearing as soon as practicable.

## **23.5 Conflict of Interest – Hearing Chair or Hearing Panel Members**

Upon receipt of written notice of the names of the Hearing Chair and Hearing Panel members,<sup>8</sup> if a party believes that they have a potential conflict of interest with either a Hearing Panel member or Hearing Chair, the party should notify the Title IX Coordinator, who will forward the notification to the Hearing Chair. The notification must be in writing, made within two (2) business days of the notice, and include facts substantiating the claim of conflict. The Hearing Chair has discretion whether to remove a member of the Hearing Panel or to recuse themselves.

## **23.6 Request to Reschedule Hearing**

Either party may request to have a hearing rescheduled. The request may be granted at the discretion of the Hearing Chair. Absent extenuating circumstances, requests to reschedule must be submitted at least five (5) business days prior to the hearing. A request to reschedule a hearing must be supported by a compelling reason for the delay. Given the number of individuals involved in a hearing, and the attendant difficulty of scheduling and rescheduling them in a timely manner, it may not be possible to accommodate all scheduling requests. The Hearing Chair may also reschedule a hearing, without a request by the parties, when there is reasonable cause to do so.

## **23.7 Newly Discovered Evidence**

If, after the issuance of the final investigative record and investigative report and prior to the issuance of the Hearing Panel decision, a party seeks to present a witness or introduce evidence not requested prior to the hearing and not disclosed to the investigator, the Hearing Chair may grant such request upon a showing that the witness or evidence is relevant, material, newly discovered, and could not have been discovered during the investigation with due diligence.

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<sup>8</sup> Notice of the Hearing Chair may precede notice of the Hearing Panel members.



Where a Hearing Chair permits a party to introduce a newly discovered witness or evidence the Hearing Chair will reschedule or adjourn the hearing for the investigator to investigate the newly discovered witness or evidence.

The Hearing Chair will also re-open the pre-hearing submission process, as appropriate, so that the parties may respond to the new information.

## **23.8 Pre-Hearing Submissions by the Parties**

Prior to a hearing, the parties will be asked in writing by Title IX Coordinator to make certain decisions and requests regarding the conduct of the hearing. This process is designed to ensure that the hearing is conducted in as equitable, respectful, and efficient a manner as possible.

The parties will be asked to submit in writing (1) opening statements and (2) names of any requested witnesses.

All Pre-Hearing Submissions are optional but waived if not completed by the stated deadlines, including any approved extensions.

The Hearing Chair has the authority to redact or reject Pre-Hearing Submissions that do not comply with the Procedures, or contain irrelevant content

Prior to the hearing, the Title IX Coordinator will distribute each party's Pre-Hearing Submissions to the other party for their review.

### ***23.8.1 Pre-Hearing Submission – Written Opening Statements and Witness Requests***

Upon providing the parties with copies of the final investigative record and report, the Title IX Coordinator will instruct the parties, in writing, that they have the opportunity to prepare a written opening statement and submit a written list of proposed witnesses.

The parties will be given five (5) business days for such submissions.

Within the five (5) business days, the parties may request extensions that may be granted, if reasonable, at the discretion of the Hearing Chair. Any extension granted to one party will be granted to the other party. Delays simply to prolong the process will not be permitted.

### ***23.8.2 Written Opening Statements***

The parties may prepare a written opening statement, not to exceed 2500 words.

The purpose of the opening statement is for each party to respond to the investigative report (which is not evidence) and record and explain to the Hearing Panel why it should find in the party's favor. The parties may not add, or address information not contained in the investigative record before the Hearing Panel, as the Hearing Panel will not consider new information. Nor may the parties address issues that pertain to sanctions and remedies. The Hearing Panel does not consider these issues when determining responsibility. The parties may appropriately raise such issues in their Impact/Mitigation Statements.

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The parties should include specific page citations to the final investigative record.

These statements must be signed by the parties.

### **23.8.3 *Witness Requests***

All interview statements contained in the final investigative record become part of the hearing record and are before the Hearing Panel. If a party wants the Hearing Panel to hear directly from a witness or the other party, the party must submit a written request within the five (5) business days. The parties may request only parties or witnesses who were interviewed by the investigator during the investigative process.

Such a request should include:

1. The names of proposed party or witnesses, including the investigator, if they request that the investigator testify.
2. For each proposed party or witness, an explanation of why the individual's presence is relevant and helpful to the Hearing Panel in determining responsibility. For example, the party should explain why a party or witness's in-person testimony is needed in addition to their interview statement in the final investigative record.

The Hearing Chair and Hearing Panel will review the parties' witness requests. After consultation with the Hearing Panel, the Hearing Chair will rule on the parties' requests and shall grant reasonable requests that will not unduly burden the hearing process with duplicative or unnecessary cumulative testimony.

The Hearing Chair, in consultation with the Hearing Panel, may call witnesses not requested by the parties.

The parties may, but need not, propose questions and/or topics to be addressed by the Hearing Panel with the requested party or witness. By indicating proposed questions and topics at this juncture, the parties will help the Hearing Chair and Hearing Panel understand why the parties would like to hear from specific individuals. The parties may also propose questions and/or topics to be addressed by the Hearing Panel with themselves if the party chooses to testify. The parties, through their advisors, will have the opportunity to ask questions of the other party and the witnesses.

## **23.9 Impact/Mitigation Statement**

The parties will be permitted, but not required, to prepare a written or recorded Impact/Mitigation Statement relevant to any sanctions. The parties may submit the statement up until the start of a hearing. These statements are distributed to the Hearing Panel and the parties only if the Hearing Panel finds the respondent responsible. The Title IX Coordinator will provide the Impact/Mitigation Statements to the parties with a copy of the Hearing Panel's written decision.



## **23.10 Information on Respondent's Prior Discipline to Hearing Panel**

Human Resources shall review and as relevant provide information to the Hearing Chair concerning: 1) respondent's prior disciplinary record related to prohibited conduct; 2) an employee's discipline record from another employer related to prohibited conduct; or 3) a criminal conviction related to prohibited conduct. This information will be disclosed to the Hearing Panel only if the Hearing Panel makes a finding of responsibility of prohibited conduct under Policy 6.4 and exclusively for use in the determination of recommended sanctions.

## **23.11 Hearing Process and Format**

### ***23.11.1 Overview of Hearing Process and Format***

All hearings will be private. The only persons present will be the parties, their advisor(s) and support person, witnesses (when testifying), the Hearing Panel and Hearing Chair, the investigator, and any staff necessary for the conduct of the hearing.

The parties with any advisors and support persons will be in separate, private rooms, except the advisor responsible for the examination process will be present in the same room as the party they are questioning. The parties will never be in the same room as each other.

The parties will participate remotely via a secure audio-visual connection, with the exception that when a party testifies and gives their oral closing statement, generally, they should do so in the presence of the Hearing Panel and Hearing Chair; they may be accompanied by their advisors and support persons.

Witnesses may be present only for their own testimony.

The Hearing Chair, in consultation with the Hearing Panel, may establish reasonable time limits, rules, and format, providing the parties with equal opportunities to participate. The Hearing Chair may adjourn the hearing, once commenced, and later reconvene the hearing in consideration of factors including, but not limited to, the unavailability of a witness, party, Hearing Chair, Hearing Panel member, or needed personnel; inclement weather; or in order to make an evidentiary or procedural ruling. The Hearing Chair may also declare a "mishearing" if the process has become irreparably tainted (e.g., prejudicial conduct by an advisor, circumstances during a hearing rendering a panelist unsuitable for the panel, etc.).

Formal rules of evidence will not apply.

Evidence that was excluded or redacted from the investigative record as impermissible under these procedures or applicable law will not be admissible at the hearing.

Typically, the format of the hearing will be as follows:

- Introduction by the Hearing Chair. The Hearing Chair will explain the hearing process, address any necessary procedural issues, and answer questions.
- Testimony and cross-examination of the complainant.
- Testimony and cross-examination of the respondent.

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- Testimony and cross-examination of any witnesses.
- Closing statements by the complainant followed by the respondent.

The Hearing Chair, in consultation with the Hearing Panel, has the discretion to recall a witness for additional testimony.

### ***23.11.2 Testimony and Cross-Examination***

Testimony is conducted through a question-and-answer format.

The Hearing Chair will ask persons being questioned to affirm that they will testify truthfully.

Both the complainant and the respondent may testify or decline to testify and may make their election when their turn to testify arises.

If a party proposes the other party or a witness not on the witness list, but interviewed by the investigator, the Hearing Chair, in consultation with the Hearing Panel, may grant the request where the necessity for such could not have been reasonably anticipated in advance. The Hearing Chair, in consultation with the Hearing Panel, reserves the right to call a witness not on the witness list but previously interviewed by the investigator. In such case, the parties will be given time to ask or propose questions for the witness.

There is a right to cross-examination. Only relevant cross-examination and other questions may be asked of a party or witness. 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 sexual predisposition or 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.

Each party's advisor is permitted to ask the parties and any witnesses all relevant questions and follow-up questions, including those challenging credibility.

Before a complainant, respondent, or witness responds to a question by a party's advisor, the Hearing Chair must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

If the complainant chooses to testify, the complainant will testify first. Any questioning of the complainant will be conducted in this order: Hearing Panel and Hearing Chair, the complainant's advisor and then the respondent's advisor. After a break, any follow up questioning of the complainant will be conducted in this same order.

If the respondent chooses to testify, the respondent will testify next. Any questioning of the respondent will be conducted in this order: Hearing Panel and Hearing Chair, the respondent's advisor and then the complainant's advisor. After a break, any follow up questioning of the respondent will be conducted in this same order.



Any non-party witnesses will testify after any testimony from the parties and in an order that the Hearing Chair deems appropriate. Any questioning of non-party witnesses will be conducted in this order: Hearing Panel and Hearing Chair, the complainant's advisor, and then the respondent's advisor. After a break, any follow up questioning of non-party witnesses will be conducted in this same order.

When parties have multiple advisors present at the Hearing, the Hearing Chair has the right to require them to select one of them to conduct the cross-examination throughout the Hearing, so long as such requirement is applied equally to the parties.

### **23.12 Closing Statements**

The parties may provide both oral and written closing statements.

A closing statement is an opportunity for the parties to summarize the evidence presented to the Hearing Panel and suggest inferences and conclusions.

The parties may not add, or address information not provided to the Hearing Panel, as the Hearing Panel will not consider new information. Nor may the parties address issues that pertain to sanctions and remedies. The Hearing Panel does not consider these issues when determining responsibility. The parties may appropriately raise such issues in their Impact/Mitigation Statements.

The Hearing Chair will establish a time limit for brief oral closing statements, typically around five (5) minutes.

The Hearing Chair will also set the schedule for submission of written closing statements. The parties should assume that deliberations will commence immediately following the hearing, in which case the parties will be expected to submit written closing statements shortly after the oral closing statements. If there is an adjournment for deliberations, the Hearing Chair may provide the parties with limited additional time to submit their statements.

Each party's written statement will be limited to 2000 words and to the evidence contained in the investigative record and hearing. The written statements will be distributed to the other party, Hearing Chair, and Hearing Panel for their review.

These statements must be signed by the parties.

### **23.13 Deliberations on Findings of Responsibility**

After closing arguments, the Hearing Panel may begin its deliberations. Deliberations will be completed as expeditiously as possible.

Deliberations will be in private and they will not be audio-recorded.

The Hearing Chair may participate in deliberations but does not vote.

The Hearing Panel will make its decision based upon a majority vote.



## **23.14 Deliberations on Sanctions and Remedies**

A Hearing Panel that finds the respondent responsible will continue its deliberations to consider appropriate potential sanctions and remedies.

Prior to deliberating on sanctions and remedies, the Hearing Chair will distribute to the Hearing Panel any written or recorded Impact/Mitigation Statements previously submitted by the parties, subject to any redactions required by law and the information provided to the Hearing Chair concerning respondent's prior and subsequent conduct and/or criminal record. (See Section 23.10). (An employment record and/or criminal record being considered solely for sanctions will not be shared with the complainant.)

Deliberations will be in private and they will not be audio-recorded.

Deliberations will be completed as expeditiously as possible.

The Hearing Chair may participate in deliberations but may not vote.

In evaluating sanctions and remedies, the Hearing Panel will consider:

- the severity of the prohibited conduct;
- the circumstances of the prohibited conduct;
- the impact of the prohibited conduct and sanctions and remedies on the complainant;
- the impact of the prohibited conduct and sanctions and remedies on the community;
- the impact of the prohibited conduct and sanctions and remedies on the respondent;
- prior discipline related to sexual misconduct by the respondent and any criminal convictions related to sexual misconduct;
- the goals of Policy 6.4 and these procedures; and
- any other mitigating, aggravating, or compelling factors.

The Hearing Panel may impose one or more of the following sanctions and remedies:

- Measures designed to restore or preserve equal access to the University's educational program or activity, similar in kind to the Supportive Measures specified under these procedures.
- Appropriate educational steps (such as alcohol or drug education, counseling);
- Restrictions or loss of specified privileges at the University for a specified period of time;
- Oral warning;
- Written discipline;
- Disciplinary probation for a stated period;
- Demotion\*;
- Removal from administrative or other position held in addition to primary position;
- Salary reduction or other monetary penalty;
- Unpaid suspension of employment\*; and
- Termination of employment\*.

The Hearing Panel may also recommend to the Title IX Coordinator that the University take measures on campus to remedy the effect or prevent the reoccurrence of such prohibited conduct.

***\* For a faculty respondent, the panel will impose a sanction of mandatory referral to the trustee suspension/dismissal procedures for the specific sanction.***

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## **23.15 Hearing Panel Decision**

The Hearing Panel will issue a written decision as expeditiously as possible upon completion of deliberations. The Title IX Coordinator will provide the written decision to the parties simultaneously and as soon as practicable. The Hearing Panel Decision will include:

- the Procedural steps taken during the investigation,
- the specific prohibited conduct for which the respondent was found responsible and not responsible with identification of the allegations potentially constituting Title IX sexual harassment,
- the findings of fact and the rationale for the Hearing Panel's determinations regarding both responsibility and sanctions. The Hearing Chair, on behalf of the Hearing Panel, must consult with the head of the respondent's college or unit with respect to sanctions and remedies. The information provided to the Hearing Chair must be conveyed to the Hearing Panel before it imposes sanctions and remedies,
- whether remedies designed to restore or preserve equal access to Cornell's education program or activity will be provided by Cornell to the complainant,
- any dissenting opinion,
- sanctions and remedies if the respondent is found responsible, and
- instructions and time limits for appeals.

The decision may incorporate and reference any portions of the proceedings, including the investigative record and report, as the Hearing Panel deems appropriate.

Both the complainant and the respondent will be informed simultaneously of any sanctions and remedies, the date by which the requirements must be satisfied (if applicable), and the consequences of failure to satisfy the requirements.

After the Hearing Chair and Hearing Panel receive notification that the appeal process is completed, the Hearing Chair and Hearing Panel members will securely dispose of any notes they took during the hearing.

## **23.16 Hearing Record**

An audio recording will be made of all hearings, but not of deliberations. The parties may listen to the audio recording of the hearing during business hours at a secure and private campus location with access facilitated by the Title IX Coordinator. As determined necessary in the discretion of the Title IX Coordinator (e.g., while in remote learning and work environments) and subject to restrictions, the audio recording may be provided to the parties to listen to at a secure and private non-campus location.

In the event of any failure rendering the audio recording of the hearing inaudible in whole or in part, the record will be recreated as necessary, whether in its entirety or for any inaudible portions, with input from the parties, any witnesses whose testimony is at issue, the Hearing Panel, and Hearing Chair. Such failure will not constitute grounds for appeal.

Individuals appearing before the Hearing Panel, whether as a party or witness, are prohibited from recording any portion of the hearing.



Hearing Panel members are also prohibited from recording any portion of the hearing.

The hearing record will include: the audio recording and written transcript of the hearing, the Hearing Panel's decision, the final investigative record and report, the parties' written responses to the investigative report, the parties' pre-hearing submissions, the written witness list, written opening and closing statements, written submissions permitted by these procedures made to the Hearing Chair or during the hearing, and if there is a determination of responsibility, the parties' Impact/Mitigation Statements, and information concerning the respondent's prior misconduct.

The Hearing Panel has access to the hearing record.

## **24 APPEAL OF A HEARING PANEL DECISION**

Both the party-complainant and the respondent may appeal the decision of the Hearing Panel. A non-party complainant may not appeal the decision of the Hearing Panel.

All appeals will be heard by a three (3) member Appeal Panel that includes the Provost, the Vice President for Student and Campus Life and the Vice President for Human Resources and Chief Human Resources Officer, or their designee.

Upon receipt of written notice of the names of the Appeal Panel members, if a party believes that they have a potential conflict of interest with an Appeal Panel member, the party should notify the Title IX Coordinator, who will forward the notification to the Appeal Panelist(s). The notification must be in writing, made within two (2) business days of the notice, and include facts substantiating the claim of conflict. The Appeal Panelist(s) has discretion whether to recuse themselves.

All appeals will be based solely upon the appeal record.

The appeal record will consist of two parts: the hearing record and supplemental materials. The supplemental materials will include the written appeal and the following to the extent that they exist: a written response to the appeal, content deemed irrelevant or duplicative by the investigator, evidentiary materials excluded or redacted from the investigative record, newly discovered evidence, impact/mitigation statements, and information concerning the respondent's prior misconduct. The various supplemental materials will only be reviewed by the Appeal Panel as needed, including when relevant to the grounds for the appeal, if the Appeal Panel reverses a finding of not-responsible, or if it is considering the appropriateness of the sanctions or remedies. Appeals may be brought only upon one or more of the following grounds:

1. The sanctions or remedies are not commensurate with the injury/violation or are unjust.
2. A University official or officials, including the Hearing Panel, assigned responsibility for performing specific functions by these procedures, violated the fair application of relevant University procedures, and such violation may have had a prejudicial effect upon the outcome. This includes conflict of interest or bias.
3. A University official or officials, including the Hearing Panel, assigned responsibility for performing specific functions by these procedures, committed an error in interpreting Policy 6.4, these procedures, and such error may have had a prejudicial effect upon the outcome. This includes determinations of jurisdiction.
4. The Hearing Panel rendered a decision that is clearly erroneous.



5. New evidence was discovered after the Hearing Panel's decision that could not have readily been discovered before the decision and that would probably change the outcome.

A party may commence an appeal by submitting a written statement to the Title IX Coordinator within ten (10) business days of issuance of the Hearing Panel's decision.

The appeal statement must set forth:

- the determination(s) being appealed,
- the specific ground(s) for the appeal, and
- the facts supporting the grounds.

The appeal statement will be limited to 3,500 words.

Failure to submit an appeal within the ten (10) business days or any approved extension constitutes waiver of the right to appeal.

Within the ten (10) business days, a party may request an extension of time by submitting a request to the Title IX Coordinator explaining the reason(s) for the request. The Appeal Panel will have discretion to grant such a request upon a finding of good cause for the delay.

A copy of the appeal statement will be provided to the other party, who, within ten (10) business days may submit a written response to the Title IX Coordinator. The response should address both the specific ground(s) for appeal set forth in the appealing party's statement and the specific facts asserted by the appealing party. The response will be limited to 2,500 words.

The Appeal Panel will establish a reasonable schedule for issuing a written decision, typically no later than thirty (30) business days after receipt of the non-appealing party's submission or the time for submission has expired.

The decision must be by a majority vote of the Appeal Panel and will include the rationale for the Appeal Panel's decision and any dissenting opinion.

Findings of fact will not be set aside unless clearly erroneous.

Harmless error will be ignored.

The Appeal Panel may affirm the decision or sustain any of the above-specified grounds for appeal, in which case the Appeal Panel may:

- reverse a finding;
- change a sanction or remedy;
- remand a case to the original Hearing Panel for clarification or reconsideration consistent with the Appeal Panel's decision, if doing so would assist with a timely, practicable, and efficient resolution of the case;
- remand a case for a new hearing to either the original Hearing Panel or a newly composed Hearing Panel; or
- remand a case for a new or additional investigation, followed by an adjudication consistent with these procedures, to either the original investigator or to a new investigator.



If the Appeal Panel reverses a finding of not responsible, the Appeal Panel may consult with the head of the respondent's college or unit with respect to sanctions and remedies to be included in their written decision. If the impact/mitigation statements have not previously been distributed, they would be distributed to both parties only upon a finding of responsibility, and, in that instance, when the Title IX Coordinator distributes the Appeal Panel's written decision to the parties.

If the Appeal Panel calls for the admission of new evidence, if possible, it will remand the case to the Hearing Panel from which it originated for a new hearing.

Upon remand from the Appeal Panel, as necessary and possible, a Hearing Panel may remand a case to the investigator from which it originated for further investigation.

### **24.1 Appeal Panel Decision is Final**

The Appeal Panel decision is the final determination of the matter by the University and is not subject to any additional review, appeal or grievance or any other internal University mechanisms.<sup>9</sup> This procedure specifically eliminates recourse to Trustee, college and AFPS committee grievance processes. However, nothing in these procedures abrogates post-adjudication rights as provided by state and federal law.

### **24.2 Imposition of Sanctions**

Sanctions are imposed upon the conclusion of the appeal, or if no appeal is sought, upon the conclusion of the period for appeal.

## **25 RESTORING RESPONDENT'S REPUTATION UPON A DISMISSAL OF A FORMAL COMPLAINT**

Upon completion of all proceedings, including any appeals, if a Formal Complaint has been dismissed, where appropriate, the Title IX Coordinator will attempt to restore the reputation of the respondent. To the extent permissible by law and University policy, the Title IX Coordinator may take such steps as deleting records and, unless the respondent prefers otherwise, notifying persons who participated in the proceedings of the dismissal and/or making a public announcement of the outcome.

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<sup>9</sup> The sole exception to this provision is that employees represented by a collective bargaining agreement retain the opportunity to grieve under the applicable collective bargaining agreement.

