



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

- Aiding Prohibited Conduct;
- Attempting to Commit Prohibited Conduct;
- Dating and Domestic Violence;
- Retaliation;
- Sexual Assault;
- Sexual Exploitation;
- Sexual Harassment and Sex/Gender-Based Harassment;
- Stalking; and
- Violating a Supportive Measure and/or Temporary Suspension

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.

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# 1 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 the Title IX Coordinator becomes aware of an alleged incident of prohibited conduct.

# 2 DESIGNATION AS COMPLAINANT AND RESPONDENT

A person who initiates a Formal Complaint of prohibited conduct under these procedures will be designated as a “party complainant” or “complainant.” A student 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.

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 9.2.2). 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 the Cornell Office of Civil Rights. Additionally, non-party complainants may submit impact/mitigation statements prior to the Hearing (See Section 26.9).

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 16 of these Procedures (“Supportive Measures and Temporary Suspensions”).

# 3 DEFINITIONS OF PROHIBITED CONDUCT

## 3.1 Aiding Prohibited Conduct

A person aids prohibited conduct if, with the intent to promote or facilitate such conduct, that person helps another person commit the prohibited conduct.

## 3.2 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.



### **3.3 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>1</sup>; (2) a current or former spouse or intimate partner; (3) a person with whom the complainant shares a child; or (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.

### **3.4 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 an 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.

### **3.5 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.

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<sup>1</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.



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.



### **3.6 Sexual Exploitation**

Sexual Exploitation is intentionally engaging in any of the following:

- Observing another person when that person is nude or engaged in sexual activity without the knowledge and consent of the person observed or allowing another to observe consensual sexual activity without the knowledge and consent of all parties involved;
- Making, sharing, posting, streaming or otherwise distributing any image, photography, video, or audio recording depicting or otherwise recording another person when that person is nude or engaged in sexual activity without the knowledge and consent of the person depicted or recorded;
- Exposing one's genitals to another person without the consent of that person;
- Exposing another person to a sexually transmitted infection without the knowledge and consent of the person exposed; and
- Causing another person to become incapacitated with the intent of making that person vulnerable to nonconsensual sexual assault or sexual exploitation.

### **3.7 Sexual and Sex/Gender-Based Harassment**

Sexual Harassment and Sex/Gender-Based Harassment is unwelcome conduct on the basis of sex 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 nature, which may include acts of aggression, intimidation, or hostility, whether verbal, nonverbal, graphic, physical, or otherwise.

Sex/Gender-Based Harassment is harassment based on sex, sexual orientation, gender identity, or gender expression, which may include acts of aggression, intimidation, or hostility, whether verbal, nonverbal, graphic, physical, or otherwise, even if the acts do not involve conduct of a sexual nature.

In evaluating whether a hostile environment exists, the University will consider the totality of known circumstances, including, but not limited to:

- The frequency, nature, and severity of the conduct;
- Whether submission to or rejection of such conduct was made, either explicitly or implicitly, a term or condition of a person's participation in any University programs or activities;
- Whether the conduct was physically threatening;
- The effect of the conduct on the complainant's mental or emotional state;
- 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 a person's attractiveness or sexuality.

This list is not meant to be exhaustive, and whether these actions constitute sexual harassment may depend on 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.

### **3.8 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>2</sup>
- Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

### **3.9 Violating a Supportive Measure and/or Temporary Suspension**

A person violates a Supportive Measure and/or Temporary Suspension if it is an order by a University official and the person to whom the order applies knowingly violates any of the conditions of the order. One common example of an order by a University official is a "no-contact" order. Alleged violations of Supportive Measures and/or Temporary Suspensions issued under Policy 6.4 are subject to resolution under these procedures.

## **4 EFFECTIVE DATE OF THESE PROCEDURES**

The effective date of these procedures is August 1, 2016.

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.

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<sup>2</sup> This definition is consistent with VAWA.





## 5 DEFINITION OF STUDENT

The term “student” includes: Undergraduate, graduate, medical, veterinary, and professional students upon their commencement of attendance, defined as the earliest of: the first day of the term for which they were admitted; their first day residing in a university residence hall; the first day of a university-sponsored pre-orientation trip, activity, or academic program for which they are participating; or on the first day of a graduate assistantship for the first semester/term for which they were admitted. A student’s status ends when a student withdraws or is withdrawn from the University, is dismissed (expelled) from the University, or they graduate. Individuals participating in non-credit bearing programs or who attend class(es) on a non-credit basis, and individuals who attend class(es) at the University on a for-credit basis while still an elementary, middle, or high school student, or foreign equivalent, are not students for the purposes of these procedures.<sup>3</sup>

## 6 JURISDICTION

These procedures will apply to alleged prohibited conduct by a student on any campus of the University, on any other property or facility used by it for educational purposes, or on property owned or controlled by a University-related residential organization, student organization, sorority, or fraternity that is officially recognized by or registered with the University.<sup>4</sup>

All actions by a student 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.

These procedures also will apply regardless of the location of the alleged prohibited conduct where the President or their designated representative in the Cornell Office of Civil Rights determines that either:

- the alleged prohibited conduct has occurred in the context of a University education program or activity; or
- the alleged prohibited conduct poses a substantial threat to the University’s educational mission, such as an allegation of serious misconduct by a Cornell student against a non-Cornell affiliated individual, or to the health or safety of University community members, including potentially contributing to or creating a hostile environment on any campus of the University.

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

## 7 TIME LIMIT TO FILE FORMAL COMPLAINTS

To promote timely and effective review, the University strongly encourages complainants and other persons with knowledge of possible violations of this policy to make reports as soon as possible, ideally within one year of the alleged prohibited conduct. A delay in reporting may affect the University’s ability

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<sup>3</sup> For complaints against graduate or undergraduate teaching or research assistants arising out of performance of academic assignments, Policy 6.4 procedures governing employees apply.

<sup>4</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.



to gather relevant and reliable information, contact witnesses, investigate thoroughly, and respond meaningfully. It may also affect the University's ability to take disciplinary action against a student who has engaged in prohibited conduct.

While prompt reporting is encouraged, the University will consider as timely any Formal Complaint that is filed under these procedures as long as the respondent is a "student," as defined by these procedures, (e.g., has not graduated or permanently left the University).

If the respondent is no longer a student at the time of the Formal Complaint, and the University is, thus, unable to pursue resolution, it will still seek to meet its Title IX obligations by providing support for the complainant and, as feasible, taking appropriate steps to end any prohibited conduct, prevent its recurrence, and address its effects.

## 8 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.

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

When the University has actual knowledge of alleged prohibited conduct under these Procedures, it will respond promptly and reasonably in light of the known circumstances. The University will treat complainants and respondents equitably by offering Supportive Measures to each and by following the grievance process set forth in these Procedures before the imposition of any disciplinary sanctions or other actions (that are not Supportive Measures or temporary suspension) against a respondent.

### 9.1 Initial Assessment

Upon receipt of a report of alleged prohibited conduct by a student, the Title IX Coordinator<sup>5</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.

#### 9.1.1 *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.

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<sup>5</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.



In the initial assessment and meeting or correspondence with the complainant, the Title IX Coordinator will:

- 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 16 "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 (by Hearing or Alternate Resolution) under these procedures; provide the complainant with an overview of these procedures, including supportive measures; and inform the complainant of the right to withdraw a Formal Complaint at any time prior to resolution and to decline or discontinue resolution under these procedures at any time, including that declining to participate in an investigation and/or Hearing 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 Complaint, supportive measures, or neither 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;
- 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.



### ***9.1.2 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.

## **9.2 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:

### ***9.2.1 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. The investigation begins with the complainant making a signed, written Formal Complaint.

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

The University strongly supports the complainant's decision not to pursue a Formal Complaint under these procedures and desire for anonymity.

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 with reasonable and available Supportive Measures, which may include academic, housing, transportation, employment, and other measures. (See Section 16 "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. Therefore, certain Supportive Measures may not be available if the complainant wishes to maintain anonymity.

The Title IX Coordinator may also take proactive steps, such as training or awareness efforts, to address sexual and related misconduct in a general way that does not identify the complainant.

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

### ***9.2.3 University Determination That the Complainant’s Request(s) Can Be Honored***

Where 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.

### ***9.2.4 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 the resolution process under these procedures by making 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.



## 10 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 16 “Supportive Measures and Temporary Suspensions”). Supportive Measures become effective when notice of the Supportive Measures is provided.

## 11 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 proceedings, and are not to interfere with meetings or proceedings. With limited exception for cross-examination in Hearing Process A, advisors and support persons may not speak on the party’s behalf at any time. (See Section 26 of these Procedures (“Hearings, Generally”).)

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 hearings, the role of the advisor varies depending upon the cross-examination requirements of the Hearing Process, as follows:

- Hearing Process A: 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. If a party does not have an advisor present at the live hearing, the university will provide without fee or charge to that party, an advisor of the university’s choosing to conduct cross-examination on behalf of that party.





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.

- Hearing Process B: Cross-examination of the other party and any witnesses is permitted only through written questions submitted by the parties to the Hearing Chair. Parties may have, but are not required to have, an advisor at 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 either the Title IX Coordinator or Hearing 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 to obtain a substitute advisor or support person.

## 12 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.

## 13 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 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.

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.





## 14 OBLIGATION TO PROVIDE TRUTHFUL INFORMATION

At all stages of the process, all Cornell University community members are expected to provide truthful information. “Furnishing false information to the University with intent to deceive” is prohibited and subject to disciplinary sanctions under the Student Code of Conduct, Section (IV)(N)(1). This provision does not apply to reports made or information provided in good faith, even if the facts alleged are not later substantiated.

## 15 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.

## 16 SUPPORTIVE MEASURES AND TEMPORARY SUSPENSIONS

### 16.1 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 educational 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 for or restrictions upon one or both parties. Restrictions or loss of specified privileges at the University (such as membership on a sports team or in an extracurricular) may not be issued as Supportive Measures.

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 these procedures.

## **16.2 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;
- changes in campus housing;
- safety escorts;
- individualized prevention and awareness training;
- facilitated agreements to delete consensually-obtained nude or sensitive images;
- restrictive orders; and
- “No-contact” orders (curtailing or prohibiting contact or communications between or among individuals).

## **16.3 Issuance of Supportive Measures**

The Title IX Coordinator is responsible for issuing 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 Title IX Coordinator will make reasonable efforts to communicate with any impacted party to address safety and emotional and physical well-being concerns.

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. Therefore, certain Supportive Measures may not be available if the complainant wishes to maintain anonymity.

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

## **16.4 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 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.

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.

## **16.5 Requested Review of Title IX Coordinator's Decisions Regarding Supportive Measures**

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 Measures.

Both parties may petition the Vice President of Student and Campus Life (VPSCl) in writing to review the Title IX Coordinator's decision whether to issue, modify, or remove Supportive Measures. A party may seek such review only if the Supportive Measure directly impacts that party. A party seeks review by submitting a letter explaining the reason for their request for review and including any written evidence in support of such request. The materials should be submitted to the Title IX Coordinator, who will forward all materials to the VPSCl.

If, based upon the request, the VPSCl is considering issuing, modifying, or removing a Supportive Measure, the VPSCl will invite the non-petitioning party and the Title IX Coordinator to submit responses. The Title IX Coordinator will then inform the non-petitioning party that a request has been filed and will provide a copy of the request to that party. The VPSCl will establish a reasonable timeline for handling the matter, including deadlines for submissions.

If the VPSCl determines that the Title IX Coordinator's decision should be set aside, the VPSCl will instruct the Title IX Coordinator to vacate the prior decision on Supportive Measures immediately. At that time, the Title IX Coordinator may impose alternate reasonable and appropriate Supportive Measures. The VPSCl may, but is not required to, provide the Title IX Coordinator with guidance regarding appropriate alternate Supportive Measures.

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

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



## **16.6 Temporary Suspensions Pending Resolution**

Once a Formal Complaint has been filed, where immediate action is necessary to protect the complainant or the University community, the Title IX Coordinator or other appropriate University official delegated by the President will have discretionary power to suspend the respondent pending resolution of the underlying case.

Suspension may include the withdrawal of any or all University privileges and services, including class attendance, participation in examinations, and utilization of University premises and facilities, as determined by the President or designee.

Understanding that the underlying allegation of prohibited conduct has not been adjudicated on the merits, a Temporary Suspension may be imposed only when Supportive Measures are deemed insufficient to protect the complainant or University community.

In determining whether a Temporary Suspension is appropriate, the President or the President's designated representative in the form of the Title IX Coordinator or other appropriate University official 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 used a weapon or force.

Both parties may at any time request that the Title IX Coordinator or other University official acting as the President's designee impose, modify, or lift a Temporary Suspension based upon a change in circumstance or new information that would affect the necessity of a Temporary Suspension.

Violations of Temporary Suspensions that are orders by a University official may constitute prohibited conduct under these procedures.

## **16.7 Review of Temporary Suspensions**

The Policy 6.4 Appeal Panel will conduct the review of a decision to impose a Temporary Suspension. The decision not to impose or to lift a Temporary Suspension is reviewed in accordance with the procedures set forth above.

The respondent may petition the Appeal Panel in writing for a review of the decision to impose a Temporary Suspension.

The petitioning party commences the review by submitting a petition explaining the reason for their request and including any written evidence in support of such request. The materials should be submitted to the Title IX Coordinator, who will forward all materials to the Appeal Panel. The Title IX Coordinator will also inform the non-petitioning party that a petition has been filed and provide a copy of the petition to that party.



The non-petitioning party may submit a written response but is not required to do so. The response should be submitted to the Title IX Coordinator. Any written response must be submitted within three (3) business days of receipt of the petition. The Title IX Coordinator will offer a written response to such petition within four (4) business days of receipt of the petition. For good cause, the Appeal Panel may grant requests for extensions.

The Appeal Panel will consider the petition no later than five (5) business days after it receives the petition, with exceptions for good cause. However, given the gravity of a Temporary Suspension, it is expected that an Appeal Panel will seek to meet this deadline.

If the Appeal Panel determines that good cause was not shown for the Temporary Suspension or that circumstances have changed so that the suspension is no longer necessary, it will instruct the Title IX Coordinator to lift the Temporary Suspension immediately. At that time, the Title IX Coordinator may impose alternate reasonable and appropriate Supportive Measures. The Appeal Panel may, but is not required to, provide the Title IX Coordinator with guidance regarding appropriate alternate Supportive Measures.

The Appeal Panel will provide a written decision to the parties and the Title IX Coordinator as soon as practicable.

The Appeal Panel's decision is final; there is no right to appeal.

Where the Appeal Panel has already entertained a petition and issued a decision regarding a Temporary Suspension, it may decline a party's request to review a determination regarding a change of circumstance or new information.

## **17 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.

## **18 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;
- specify whether Title IX applies;



- specify the anticipated Hearing Process (A or B) that will be used, if the Formal Complaint is to be resolved with a Hearing;
- 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, including mental health and academic support resources;
- explain the prohibition against retaliation; and
- instruct the parties to preserve any potentially relevant evidence, whatever its form.

## **19 PATHWAYS FOR RESOLUTION OF A FORMAL COMPLAINT**

A Formal Complaint may be resolved by the University's dismissal of the Formal Complaint, Alternate Resolution, Hearing, or by the complainant's withdrawal of the Formal Complaint. If the Formal Complaint is to be resolved through Hearing, the Title IX Coordinator will determine, whether such Hearing would be conducted in accordance with Hearing Process A or Hearing Process B.

Both Hearing Processes provide for live hearings conducted using technology enabling participants to appear virtually and to see and hear each other simultaneously. Both Hearing Processes provide opportunity for cross-examination of the parties and witnesses. In Hearing Process A, cross-examination is conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally. In Hearing Process B, cross-examination is conducted through written submission by the parties to the Hearing Chair. (See Section 26 of these Procedures ("Hearings, Generally").)

## **20 DETERMINATION OF HEARING PROCESS A OR HEARING PROCESS B AND WHETHER TITLE IX APPLIES**

The Title IX Coordinator will rely on the following two conditions in determining which Hearing Process will be used to conduct the Hearing:

- Whether Title IX applies to the Formal Complaint; and
- Whether, if found responsible, the respondent could face suspension or dismissal from the University as a potential sanction.

If either condition above is present, a Hearing on the Formal Complaint will be conducted in accordance with Hearing Process A. If neither of the above conditions is present, a Hearing on the Formal Complaint will be conducted in accordance with Hearing Process B.

In evaluating whether Title IX applies to the Formal Complaint, the Title IX Coordinator will determine whether the following requirements are met:



- The alleged prohibited conduct meets at least one of the definitions for sexual harassment and sex/gender-based harassment, sexual assault, dating and domestic violence, or stalking;
- The alleged prohibited conduct occurred in the University's education program or activity;
- The alleged prohibited conduct occurred against a complainant in the United States; and
- At the time of filing the Formal Complaint, the complainant is participating in or attempting to participate in the University's education program or activity.

In evaluating whether a respondent could face a potential sanction of suspension or dismissal from the University, the Title IX Coordinator will consider:

- Whether the alleged prohibited conduct involves physical acts, violence, use of a weapon or force, intimidation, threats, or a pattern of perpetration;
- Whether the alleged prohibited conduct substantially threatens the University's educational mission or the health or safety of University community members;
- Whether the complainant is a minor;
- Whether the respondent has a disciplinary history; and
- Any other relevant exacerbating or mitigating circumstances related to the alleged prohibited conduct or the parties.

The Title IX Coordinator's evaluation of a potential sanction shall not be considered by a hearing panel in determining an actual sanction.

## 21 THE PARTIES' PARTICIPATION IN THE INVESTIGATION AND HEARING

Both the complainant and the respondent may decline to participate in the investigation and/or hearing. However, the University 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 ability to participate in the hearing, as explained below.

### 21.1 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.





## **21.2 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.

## **22 DISMISSAL OF A FORMAL COMPLAINT AND/OR DETERMINATION WHETHER TITLE IX APPLIES**

The Title IX Coordinator will make an initial determination as to whether Title IX applies to the Formal Complaint based on the alleged facts. (See Section 20 of these Procedures ("Determination of Hearing Process A or Hearing Process B and Whether Title IX Applies").)

The Title IX Coordinator may dismiss<sup>6</sup> a Formal Complaint and close a case where:

- there is no jurisdiction under these procedures; or
- the facts set forth in the Formal Complaint do not constitute prohibited conduct under these procedures; or
- the complainant fails or refuses 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; or
- the complainant notifies the Title IX Coordinator in writing that they would like to withdraw the Formal Complaint or any allegations therein, prior to resolution; or
- the respondent is no longer enrolled in the University; or
- specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

Upon any dismissal, the Title IX Coordinator will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties.

The complainant will be given an opportunity to seek review by a Hearing Panel. The complainant must commence the review within ten (10) business days by submitting a letter explaining why they think the dismissal is erroneous and 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

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<sup>6</sup> Where appropriate, the Title IX Coordinator may dismiss a Formal Complaint prior to the Notice of Formal Complaint to both parties.



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 respondent that a request for review has been filed and provide a copy of the complainant's letter and any supporting materials to the respondent.

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 Title IX Coordinator's or investigator's decision by substituting its own judgment for the judgment of the Title IX Coordinator or 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.

In accordance with the procedures set forth below in "24.9. Threshold Determination by Investigator and Review by the Hearing Panel," after completing an investigation, the investigator may dismiss a Formal Complaint upon a threshold determination that there is not sufficient evidence to advance the Formal Complaint to a hearing.

## **23 CONSOLIDATION OF REPORTS, FORMAL COMPLAINTS, AND HEARINGS 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 or not joined in one investigation, 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.



## 24 INVESTIGATIONS OF A FORMAL COMPLAINT

### 24.1 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.

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 investigator does not make any findings or recommendations as to responsibility, other than to make an assessment as to whether there is sufficient evidence for the case to proceed to a hearing to determine responsibility. In the event of a hearing, the final investigative record and report become part of the hearing record.

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 witness and the other party; and
- review a draft investigative record and comment on it, in writing, before the investigator finalizes the record and prepares an investigative report.

At the hearing, the Hearing Panel will rely upon the final investigative record as well as any additional statements and information provided to the Hearing Panel pursuant to the procedures set forth below.

### 24.2 Time Frame of and Time Limitations During the Investigation

The investigation will be completed as expeditiously as possible, and will generally be completed within ninety (90) business days of the issuance of the Formal Complaint. This time period is measured from the date the Respondent receives the Notice of Formal Complaint and ends when the draft investigative record is distributed to the parties. This time-period may be subject to reasonable extension on a case-by-case basis for good cause, with notice to the parties that includes the reason for the delay.

Any time the general timeframes for resolution outlined in these procedures will be delayed, the University 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 written 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.

Procedures for Resolution of Reports Against Students Under Cornell University Policy 6.4

Effective Date: August 1, 2016

Last Updated: August 5, 2024



The investigator will establish and apply equitably to the parties 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.

### **24.3 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 of their own interviews.

The parties will be provided with transcripts, but not audio recordings, of all witness and other party interviews. Upon receiving the transcripts, 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 the Title IX Coordinator.

All persons being interviewed, 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 will not constitute grounds for appeal.



## **24.4 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 27 below).

In general, the investigator will not consider relevant any evidence which is offered solely for the purpose of providing evidence of a party's character. Generally, the investigator will also not consider as relevant any evidence of a party or witness's prior or concurrent disciplinary history.

## **24.5 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.

## **24.6 Evidence to be Excluded or Redacted from the 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 school disciplinary findings if such findings, as determined by the investigator, are irrelevant to the alleged prohibited conduct. All such findings, whether or not relevant to the alleged prohibited conduct, 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.

## **24.7 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 26.8.1).

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.

## **24.8 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 within fifteen (15) business days of the receipt of the parties' comments on the draft investigative record, and at least ten (10) days prior to any hearing. This time-period may be subject to reasonable extension on a case-by-case basis for good cause, with notice to the parties that includes the reason for the delay.

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

## **24.9 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 threshold determination is erroneous and 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 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 threshold determination was clearly in error.

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

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

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.

## **25 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. The Alternate Resolution process must be completed within thirty (30) business days of the date that both parties agree to participate in the Alternate Resolution.

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.



In every case, the Title IX Coordinator has discretion to determine whether the matter is appropriate for Alternate Resolution and to determine the appropriate 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.

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 Student Code of Conduct.



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.

### **25.1 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.

### **25.2 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.

If the respondent 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.

## **26 HEARING, GENERALLY**

### **26.1 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.



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

Through a pre-hearing submission process explained below, the parties are also entitled and encouraged to propose questions/topics for those testifying.

The parties will also be asked 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.

Formal Complaints that are adjudicated by a Hearing will be adjudicated using one of two hearing processes: Hearing Process A or Hearing Process B.

Hearings for all Title IX cases and for non-Title IX cases in which the potential sanction may include suspension or dismissal from the University will be conducted using Hearing Process A. All other cases will be adjudicated under Hearing Process B.

The Title IX Coordinator will make an initial assessment as to the Hearing Process they anticipate using and will provide this information with Notice of the Formal Complaint.

The final determination regarding Hearing Process will be made prior to the issuance of the Investigative Report and Record and communicated in writing to the parties in the investigative report.

## **26.2 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 hearing record, 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 under Policy 6.4, it will dismiss the case. If the Hearing Panel finds that the respondent is responsible under Policy 6.4, it will consider appropriate sanctions and remedies.

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

The Hearing Panel will include faculty and staff members selected through an appropriate process established by the University.



The position of Hearing Chair will be filled through an appropriate process established 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.

## **26.4 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; the Hearing Process that will be used; and, if determined, the date, time, and place of the hearing; the name of the Hearing Chair; and the Hearing Panel members.

If the notice does not include the name of the Hearing Chair, Hearing Panel members, or 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.

## **26.5 Hearing Chair or Hearing Panel Member Conflict of Interest**

Upon receipt of written notice of the names of the Hearing Chair and Hearing Panel members,<sup>7</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.

## **26.6 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. 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.

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<sup>7</sup> Notice of the Hearing Chair may precede notice of the Hearing Panel members.



## **26.7 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 or the investigator seek to present a witness or introduce evidence not requested prior to the hearing and not disclosed to the investigator, the Hearing Chair may grant admission of the evidence 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.

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.

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

Prior to a hearing, the parties will be asked in writing by the 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.

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.

### ***26.8.1 First Pre-Hearing Submission – Written Opening Statements and Witness Requests (Hearing Processes A and B)***

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.

### ***26.8.2 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.

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

These statements must be signed by the parties.

### **26.8.3 *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.

There is no second pre-hearing submission in Hearing Process A; however, 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.

In Hearing Process B, there is a second pre-hearing submission and for second pre-hearing submissions to be considered, they must follow the requirements in the section below.





#### ***26.8.4 Second Pre-Hearing Submission – Questions and Topics (Hearing Process B Only)***

The parties will be provided with a witness list and informed in writing that they have an opportunity to propose, also in writing:

1. Questions and topics for the witnesses. The parties may:
  - a. revise and supplement any questions and topics they already submitted and
  - b. propose new questions and topics.
2. Questions and topics for themselves and the other party. The parties are not required to commit to testifying at this juncture but are encouraged to prepare for the eventuality that they and the other party would testify by submitting proposed questions and topics.

The Hearing Chair will establish a reasonable deadline for the submissions, typically no longer than five (5) business days.

Within the deadline established by the Hearing Chair, 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.

In exceptional circumstances, the Hearing Chair, in consultation with the Hearing Panel, may permit late requests only where the necessity for such could not have been reasonably anticipated in advance.

The Hearing Chair, in consultation with the Hearing Panel, will determine which of the parties' requested questions will be asked or topics covered.

The Hearing Chair will approve in substance all questions or topics that are relevant and that are not prohibited by these procedures or applicable laws, unduly prejudicial, or cumulative of other evidence. At the hearing, the parties will have an opportunity to propose additional questions and topics.

The Hearing Panel and Hearing Chair will be permitted to ask their own questions.

### **26.9 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. The 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.

### **26.10 Hearing Process and Format**

#### ***26.10.1 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 may 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 by the complainant.
- Testimony by the respondent.
- Testimony by 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.

In Hearing Process A, the testimony portions of the hearing also include opportunity for cross-examination conducted by advisors.

### ***26.10.2 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 in both Hearing Processes. However, the type of cross-examination differs between them. 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.

#### In Hearing Process A:

- 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.

#### In Hearing Process B:

- Questioning will primarily be conducted by the Hearing Panel, but the Hearing Chair may supplement the Hearing Panel's questioning.
- In addition to the pre-hearing opportunity to submit questions and topics, at the hearing there is an opportunity for additional questions to be proposed for individuals who testify. This opportunity occurs after the witness's initial testimony. The questions are submitted in writing and must be approved by the Hearing Chair, in consultation with the Hearing Panel.



## **26.11 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 in the hearing record and suggest inferences and conclusions.

The parties may not add, or address information not contained in the hearing record, 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.

## **26.12 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.

## **26.13 Deliberations on Sanctions and Remedies**

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

It will issue its findings on responsibility and sanctions/remedies simultaneously.

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.



If the respondent has a Cornell non-academic disciplinary record, a known non-academic disciplinary record from another institution, or a known criminal conviction, prior to deliberating on sanctions and remedies, the Hearing Chair will also distribute to the Hearing Panel a copy of such disciplinary and/or criminal records. (Where an educational record, including a Cornell disciplinary record, is being considered solely for sanctions, it 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.

The Hearing Panel will determine sanctions and remedies by a majority vote.

In determining 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 misconduct by the respondent, including the respondent's previous school disciplinary record, both at Cornell University and elsewhere, and any criminal convictions;
- 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, reflection papers, counseling, or directed study).
- Restrictions or loss of specified privileges at the University for a specified period of time.
- Oral warnings.
- Written reprimands.
- Disciplinary probation for a stated period.
- Suspension from the University for a stated period not to exceed three (3) years.
- Dismissal (i.e., expulsion) from the University.

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.

Under Hearing Process A, sanctions and remedies will be effective at the conclusion of the Appeal, or at 10 days after the Hearing Panel decision, if neither of the parties appeals. Under Hearing Process B, they will be effective immediately, unless otherwise specified by the Hearing Panel.



## **26.14 Hearing Panel Decision**

The Hearing Panel will issue a written decision as expeditiously as possible upon completion of deliberations, and generally within thirty (30) business days from the final date of deliberations. The Title IX Coordinator will provide the written decision to the parties simultaneously and as soon as practicable.

The 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,
- 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.

## **26.15 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.

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Last Updated: August 5, 2024



The Hearing Panel has access to the hearing record. 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' 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.

## 27 APPEAL OF A HEARING PANEL DECISION

Both the party-complainant and the respondent may appeal a 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 and the Vice President for Student and Campus Life as two permanent *ex officio* members and a member of the Hearing Panel pool as the third member.

The member of the Hearing Panel selected to serve on any one Appeal Panel will be selected in the same manner as the members of a Hearing Panel are selected to serve on any one Hearing Panel. However, no person who served on the Hearing Panel will sit on the Appeal Panel in the same case.

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 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 and determinations of Hearing Process.





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 have probably changed 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 3500 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, the appealing 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 2500 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 of the Appeal Panel will be final and binding on all parties.

The decision must be by a majority vote of the Appeal Panel and will include the rationale 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 of the Hearing Panel 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 must also determine the 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.

## 28 REQUEST FOR A STAY PENDING APPEAL

In Formal Complaints using Hearing Process B, only, the Appeal Panel has discretion to stay any sanctions pending a final decision on the appeal. The Appeal Panel may, but is not required to, stay a sanction where the appealing party demonstrates the need for a stay by a clear showing.

An application for a stay must be submitted to the Title IX Coordinator. The Title IX Coordinator will provide a copy of the stay application to the Appeal Panel and the other party, who is entitled to respond to the stay application by submitting to the Title IX Coordinator a written response.

The Appeal Panel will set a reasonable timeline for handling the stay application, including a deadline for the other party to respond to the stay application.

The Appeal Panel has discretion to reconsider its decision on a stay at any time during the appeal. The stay expires at the conclusion of the appeal.

## 29 TRANSCRIPT NOTATIONS AND WITHHOLDING DEGREES

Pursuant to the Office of the University Registrar transcript notation policy for student conduct matters, the following actions will result in a permanent transcript notation for a student:

- dismissal (i.e., expulsion) after a finding of responsibility;
- suspension after a finding of responsibility; and
- withdrawal from the University while a Formal Complaint is pending.

If the underlying finding of responsibility is vacated for any reason, the transcript notation will be removed.

The University may withhold awarding a degree otherwise earned until the adjudication process set forth in these procedures is complete, including the satisfaction of any sanctions imposed.<sup>8</sup>



The University will temporarily note the respondent's transcript if the respondent has been temporarily suspended pursuant to these procedures. This temporary notation may not be appealed and will be removed upon resolution of the temporary suspension.

### **30 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>8</sup> To ensure these procedures are fully compliant with federal Title IX regulations, the University currently does not withhold the awarding of degrees otherwise earned until the adjudication process set forth in these procedures is complete.

