Office of Compliance

Title IX Procedures

Effective Date: 10/20/2020
Supersedes: 08/14/2020
Issuing Authority: Office of Compliance
Responsible Officer: Title IX Coordinator

1. Application

These Title IX Procedures apply to investigations and adjudications of Formal Complaints alleging violations of the Title IX Policy.

2. Notification

Once the Title IX Coordinator receives a report of Prohibited Conduct, the Title IX Coordinator must contact the Complainant confidentially within five (5) business days of receiving the report to discuss supportive measures and to explain the process for filing a Formal Complaint.

Supportive measures include individualized services reasonably available that are non-punitive, non-disciplinary, and not unreasonably burdensome to the Respondent. The supportive measures must ensure equal educational access and safety to both of the parties. Examples of supportive measures are described in the Title IX Policy.

3. Filing a Formal Complaint

The Complainant may file a Formal Complaint with the Title IX Coordinator alleging Prohibited Conduct. To file a Formal Complaint, the Complainant must be participating in or attempting to participate in a University education program or activity.

In the event that the Complainant does not wish to file a Formal Complaint and begin the investigation process, the Title IX Coordinator may sign a Formal Complaint to begin an investigation so long as the investigation is not clearly unreasonable in light of the known circumstances. Where the Title IX Coordinator signs a Formal Complaint, the Title IX Coordinator must be free from conflicts and bias.

The Formal Complaint may be filed with the Title IX Coordinator in person, by mail, electronic mail, or by any other means that results in the Title IX Coordinator receiving the Formal Complaint. Upon receipt, the University shall send written notice of the allegations contained within the Formal Complaint to both parties. The written notice shall contain the information specified in 34 C.F.R. 106.45(b)(2)(B).

4. Dismissal of Complaint

At any time after the Formal Complaint has been filed, the University may dismiss the Formal Complaint or discrete allegations therein if: (i) the Complainant informs the Title IX Coordinator in writing that the Complainant wishes to withdraw the Formal Complaint or discrete allegations contained therein; (ii) the
Respondent is no longer enrolled or employed by the University; or (iii) specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the Formal Complaint or any discrete allegations contained therein.

The Title IX Coordinator shall dismiss a Formal Complaint or discrete allegations therein if the conduct alleged would not meet the definition of Prohibited Conduct even if proven, or if the conduct alleged did not occur within University’s jurisdiction as defined in the Title IX Policy (i.e., the alleged misconduct occurred off campus and outside the University’s education programs and activities or the alleged conduct happened outside the United States). However, the Title IX Coordinator may refer the allegations to another office for subsequent review as appropriate under applicable University policy.

The Title IX Coordinator shall provide the parties with written notice and the reasons for such dismissal within ten (10) days of the dismissal. Such written notice shall advise the parties of their right to appeal as further stated herein.

5. Investigation

Unless a Formal Complaint is dismissed, the University shall investigate the allegations contained in the Formal Complaint. During the investigation, the Title IX Coordinator or designee shall have the sole burden of gathering evidence. The parties are not required to submit evidence but are strongly encouraged to do so to facilitate in the investigation. Evidence of a party’s medical, psychological, or similar confidential records shall not be used as evidence unless the Title IX Coordinator or designee obtains the relevant party’s voluntary, written consent.

The Title IX Coordinator or designee shall send written notice of any investigative interviews or meetings no later than ten (10) days prior to such interview or meeting. At least ten days prior to finalizing the written investigation report, the Title IX Coordinator or designee shall send any evidence directly related to the allegations to the parties and their respective advisors, and the parties shall have ten (10) days to inspect, review, and respond to the evidence presented. The Title IX Coordinator or designee shall consider the parties’ responses prior to finalizing the written investigation report.

At the conclusion of the investigation, the Title IX Coordinator or designee shall send, in electronic format or hard copy, the parties and their advisors a written investigative report that summarizes the relevant evidence. The parties shall have ten (10) days to respond to the report.

6. Informal Resolution Option

With the consent of the University, parties may participate in an informal resolution option provided that a Formal Complaint was filed, and both parties gave informed, voluntary, and written consent to participate in the informal resolution. Where a Student Complainant alleges that an employee engaged in Prohibited Conduct against the student, the Title IX Coordinator or designee shall not allow either party to pursue informal resolutions. Informal resolution shall be overseen by the Title IX Coordinator or designee. During the pendency of any informal resolution process, the investigation and adjudication processes that would otherwise occur are stayed and all related deadlines are suspended, absent a contrary determination by the Title IX Coordinator or designee.

Either party has the right to withdraw from the informal resolution process at any time prior to agreeing to a resolution. In the event either party withdraws their consent, the parties shall continue to the investigation and adjudication phase.
Any agreement reached in informal resolution is subject to approval by the Title IX Coordinator or designee. An agreement reached pursuant to informal resolution, is a final determination as to the alleged Prohibited Conduct at issue unless the terms of the agreement expressly state otherwise. Statements made in the course of an informal resolution process may not be used against either party, should informal resolution fail and the investigation and adjudication process resume.

7. Adjudication

The University shall adjudicate the Formal Complaint during a live hearing to provide an equal opportunity for the parties to present witness and other evidence. All parties, witnesses, or other participants may be physically present at the hearing or may appear virtually with the parties located in separate rooms. The University shall send written notice of the hearing no later than fifteen (15) days before the date of hearing. The hearing shall be audio or video recorded by the University. No other person is permitted to record the hearing.

There shall be one (1) Hearing Officer selected by the Title IX Coordinator who shall be responsible for administering the hearing, objectively evaluating all relevant evidence presented at the hearing, and determining what sanctions and remedial measures, if any, the University may take in the event a policy violation is found to have occurred. The Hearing Officer shall be free from conflicts of interest or bias for or against the parties. The Hearing Officer has discretion to interpret and apply these procedures in any manner that is not clearly unreasonable and is consistent with Title IX of the Education Amendments of 1972. The determinations of the Hearing Officer on all procedural and evidentiary matters are final and not subject to challenge, except as permitted by the appeal procedures specified below.

At the adjudicatory phase, as during the investigation, the University shall presume that the Respondent is not responsible for any Prohibited Conduct alleged in the Formal Complaint until the Hearing Officer has made a determination based on a preponderance of the evidence.

The parties are encouraged to select an advisor of the party’s choice to participate in the examination and cross-examination of the other party and witnesses. If a party does not have an advisor, the University shall provide an advisor of the University’s choice without a fee or charge to that party as further explained herein. Said advisor may be, but is not required to be, an attorney.

The Hearing Officer shall permit each party’s advisor to ask the other party and any witness the relevant questions and follow-up questions directly, orally, and in real time. The Hearing Officer has the sole discretion to determine whether the questions are relevant and must explain to the party’s advisor the decision to exclude an irrelevant question from cross-examination. The Hearing Officer shall exclude any examination or cross-examination that is not relevant*.

No party shall personally examine the other party or party’s witnesses. Failure to submit to cross-examination by any party or witness at the hearing shall result in the Hearing Officer disregarding any statement of that party or witness when adjudicating the Formal Complaint.

All parties, advisors, and any other persons present at a hearing are required to act professionally, maintain decorum, and abide by these procedures and any other rules specified by the Hearing Officer. The requirements of professionalism and decorum apply to all aspects of the hearing, including the manner in which questions are posed to parties and witnesses. Any party, advisor, or other person who materially disrupts the proceeding or violates applicable policies, procedures, and rules, may be barred from further participation and/or have their participation limited, as the case may be, by the Hearing Officer.
After the hearing is complete, the Hearing Officer will objectively evaluate all relevant evidence, including both inculpatory and exculpatory evidence, together with testimony and non-testimony evidence received at the hearing, and ensure that any credibility determinations made are not based on a person’s status as a Complainant, Respondent, or witness. The Hearing Officer will take care to exclude from consideration any evidence that was ruled inadmissible or otherwise barred from consideration by the Title IX Policy. The Hearing Officer will resolve disputed facts using a preponderance of the evidence (i.e., “more likely than not”) standard and reach a determination regarding whether the facts that are supported by a preponderance of the evidence constitute one or more violations of the policy as alleged in the Formal Complaint.

In the event the Hearing Officer determines that the Respondent is responsible for violating the Title IX Policy, the Hearing Officer will, prior to issuing a written decision, consult with the appropriate University official with disciplinary authority over the Respondent and such official will determine any discipline to be imposed. In the case of a Respondent who is a resident faculty member, such consultation shall include consideration of whether to initiate disciplinary procedures as specified in the *Statement on Academic Freedom, Responsibility, and Tenure* (the “Blue Book”).

The Hearing Officer will also, prior to issuing a written decision, consult with the Title IX Coordinator who will determine whether and to what extent ongoing support measures or other remedies will be provided to the Complainant.

The Hearing Officer shall issue a written decision to each party within five (5) days after the hearing, and shall include:

- Findings of fact;
- Conclusions about whether prohibited conduct occurred;
- Rationales for responsibility as to each allegation;
- Any disciplinary sanctions imposed on the Respondent;
- Whether remedies will be provided to the Complainant; and
- Information regarding appeals.

*All questions and evidence about a Complainant’s prior sexual behavior are irrelevant unless such questions and evidence about the Complainant’s prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged, 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.

8. **Remedies and Sanctions**

If the Respondent is found responsible for Prohibited Conduct after the adjudicatory hearing, the University shall provide remedies to the Complainant. Such remedies may include discipline for the Respondent and shall be reasonably designed to maintain the Complainant’s equal access to education.

9. **Appeals**

Each party shall have one (1) appeal from the Hearing Officer’s determinations and one (1) appeal from the University’s dismissal of a Formal Complaint or allegations therein. No party shall have more than one (1) appeal.
The Appeal will be solely based on one or more of the following:

- Presence of a procedural irregularity that affected the outcome of the matter;
- There is newly discovered evidence that was not reasonably available at the time the determination or dismissal was made, that could affect the outcome of the matter; and/or

The Title IX Coordinator, investigator, or Hearing Officer had a conflict of interest or bias, for or against complainants or respondents generally, or for or against the individual Complainant or individual Respondent, that affected the outcome of the matter.

There shall be one (1) Appeals Officer chosen by the Title IX Coordinator. Appeals shall be filed in writing to the Appeals Officer within five (5) days of the Hearing Officer’s written determination or the Title IX Coordinator’s date of dismissal of the Formal Complaint or allegations therein.

The Request for Appeal will be initially reviewed by the Appeals Officer to determine if the appeal was timely filed and appropriately invokes one or more of the permitted grounds for appeal. If the appeal is not timely or fails to invoke one or more of the permitted grounds for appeal, the appeal will be dismissed. If the appeal is accepted, the Appeals Officer shall be limited to reviewing the matter only on the basis of the permitted grounds for appeal that the appealing party invokes. The appeal is not a *do novo* review of the matter. The Appeals Officer shall provide the non‐appealing party written notice of the appeal and provide the non-appealing party five (5) days to submit a written response. Thereafter, the Appeals Officer will review the parties’ submissions, the hearing record, as necessary, and decide the appeal. The Appeals Officer shall provide to the parties a written notice that explains the outcome of the appeal and rationale. The decision of the Appeals Officer constitutes a final determination of the matter and is not subject to further review by the University.

10. **Advisors of Choice**

From the point a Formal Complaint is made, and until an investigation, adjudication, and appeal are complete, the Complainant and Respondent will have the right to be accompanied by an advisor of their choice to all meetings, interviews, and hearings that are part of the investigation, adjudication, and appeal process. The advisor may be, but is not required to be, an attorney.

Except for the questioning of witnesses during the hearing, the advisor will play a passive role and is not permitted to communicate on behalf of a party, insist that communication flow through the advisor, or communicate with the University about the matter without the party being included in the communication. In the event a party’s advisor of choice engages in material violation of the parameters specified in these procedures, the University may preclude the advisor from further participation, in which case the party may select a new advisor of their choice.

In the event a party is not able to secure an advisor to attend the hearing specified, and requests the University to provide an advisor, the University will provide the party an advisor, without fee or charge, who will conduct questioning on behalf of the party at the hearing. The University will have sole discretion to select the advisor it provides. The advisor the University provides may be, but is not required to be, an attorney.

The University is not required to provide a party with an advisor in any circumstance except where the party does not have an advisor present at the hearing.
11. Discretion in Application

The University retains discretion to interpret and apply these procedures in a manner that is not clearly unreasonable, even if the University’s interpretation or application differs from the interpretation of the parties.

Despite the University’s reasonable efforts to anticipate all eventualities in drafting these procedures, it is possible unanticipated or extraordinary circumstances may not be specifically or reasonably addressed by the express language, in which case the University retains discretion to respond to the unanticipated or extraordinary circumstance in a way that is not clearly unreasonable.

These procedures are not contractual in nature. Accordingly, the University retains discretion to revise these procedures at any time, and for any reason. The University may apply revisions to an active case provided that doing so is not clearly unreasonable.

12. Approval

These Title IX Procedures are approved by the undersigned and effective as of the date written below.

Approved:

Chief Compliance Officer

Date Effective: 10/20/2020

Revision Record

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