Procedures for the Resolution of Reports of Gender-based Misconduct Against Students

Title IX of the Educational Amendments of 1972 prohibits any person in the United States from being discriminated against on the basis of sex in seeking access to any educational program or activity receiving federal financial assistance. The U.S. Department of Education, which enforces Title IX, has long defined the meaning of Title IX’s prohibition on sex discrimination broadly to include various forms of sexual harassment and sexual violence that interfere with a student’s ability to equally access our educational programs and opportunities.

On May 19, 2020, the U.S. Department of Education issued a Final Rule under Title IX of the Education Amendments of 1972 that:

- Defines the meaning of “sexual harassment” (including forms of sex-based violence)
- Addresses how this institution must respond to reports of misconduct falling within that definition of sexual harassment, and
- Mandates a grievance process that this institution must follow to comply with the law in these specific covered cases before issuing a disciplinary sanction against a person accused of sexual harassment.

In accordance with the Final Rule, the College must narrow both the geographic scope of its authority to act under Title IX and the types of “sexual harassment” that it must subject to its Title IX investigation and adjudication process. In accordance, the College has developed procedures that apply only to incidents falling within the Final Rule’s definition of sexual harassment. Those procedures are referred to as the Procedures for the Resolution of Reports of Prohibited Conduct within the Scope of Title IX (Title IX procedures).

Union College remains committed to addressing any violations of College policies, even those not meeting the narrow standards defined under the Title IX Final Rule. Reports of gender-based misconduct falling outside the scope of Title IX will be investigated and adjudicated pursuant to the procedures below.

The College retains authority to investigate and adjudicate alleged prohibited conduct under these procedures or under the Title IX Procedures or other applicable College policies or procedures through a separate grievance proceeding when such conduct is discovered in the course of investigating misconduct governed by these procedures.

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The elements established in these procedures have no effect on and are not transferable to any other policy or procedure of the College for any violation of the Code of Conduct, employment policies, or any civil rights violation except as narrowly defined in these procedures. These procedures do not set a precedent for other policies or processes of the College and may not be cited for or against any right or aspect of any other policy or process.

I. General Rules of Application

1. Effective Date

The effective date of these procedures is August 14, 2020. These procedures will apply in all cases where a Formal Complaint of prohibited conduct under these procedures is made on or after August 14, 2020.

Where the date of the alleged prohibited conduct precedes the effective date of these procedures, the definitions of prohibited conduct set forth in the College’s Sexual or Gender-based Misconduct Policy in existence at the time of the alleged conduct will be used. These procedures, however, will be used to investigate and resolve all Formal Complaints made on or after the effective date of these procedures, regardless of when the conduct occurred.

2. Non-Discrimination in Application

The requirements and protections of these procedures apply equally regardless of sex, sexual orientation, gender identity, gender expression, or other protected classes covered by federal or state law. All requirements and protections are equitably provided to individuals regardless of such status or status as a Complainant, Respondent or Witness. Individuals who wish to file a complaint about the institution’s policy or process may contact the Department of Education’s Office for Civil Rights using contact information available at https://ocr.ca.ed.gov/contact-ocr.

II. Jurisdiction and Scope

These procedures apply to reports of prohibited conduct by a student that do not fall within the jurisdiction and scope of the Title IX procedures and that meet the following criteria:

1. Nature of Complaint

A report of prohibited conduct, as defined in the College’s Gender-based Misconduct Policy, committed by a student.
2. **Location of Incident**

These procedures will apply to prohibited conduct by a student that does not fall within the jurisdiction and scope of the Title IX procedures, regardless of the location of the conduct, where the President or designated representative in the person of the Title IX Coordinator determines that either:

- the alleged prohibited conduct has occurred in the context of a College program or activity, or
- the conduct poses a substantial threat to the College’s educational mission or to the health or safety of College community members, including potentially contributing to or creating a hostile environment.

3. **Identity of the Complainant**

This procedure will apply to individuals who have experienced or reported prohibited conduct, as that term is defined in the Gender-based Misconduct Policy, and who are barred from filing a Formal Complaint under the Title IX Procedures.

4. **Identity of the Respondent**

This procedure will apply to students against whom a Formal Complaint has been filed under these procedures.

III. **Time Limits to File Formal Complaints**

1. **Formal Complaint**

For the purposes of these procedures, Formal Complaint means a document, including an electronic submission, filed by a Complainant with a signature or other indication that the Complainant is the person filing the formal complaint, or signed by the Title IX Coordinator, alleging prohibited conduct against a Respondent as defined in the College’s Gender-based Misconduct Policy and requesting that the College initiate an investigation of the alleged prohibited conduct, pursuant to these procedures.

2. **Eligibility to File a Formal Complaint**

Complainants who are alleging prohibited conduct against a student and who are barred from filing a Formal Complaint under the Procedures for the Resolution of Reports of Conduct within the Scope of Title IX may file a Formal Complaint pursuant to these procedures.
To promote timely and effective review, the College strongly encourages Complainants and other persons with knowledge of possible violations of this policy to make reports as soon as possible. A delay in reporting may affect the College’s ability to gather relevant and reliable information, contact witnesses, investigate thoroughly and respond meaningfully. It may also affect the College’s ability to take disciplinary action against a student or employee who has engaged in prohibited conduct.

While prompt reporting is encouraged, the College 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 College).

If the Respondent is no longer a student at the time of the Formal Complaint and the College is, thus, unable to pursue resolution under these procedures, the College will provide support for the parties and, as feasible, take appropriate steps to end any prohibited conduct, prevent its recurrence and address its effects.

IV. The Response to a Report of Prohibited Conduct

1. Initial Assessment

Upon receipt of a report of alleged prohibited conduct, the Title IX Coordinator or Deputy Title IX Coordinator will make an initial assessment of the reported information and respond to any immediate health or safety concerns raised by the report. The Title IX Coordinator or Deputy Title IX Coordinator will evaluate the report for cause. If alleged actions do not present any potential violation of the Gender-based Misconduct Policy, but may violate other policies, the Coordinator or Deputy Coordinator will work with the student to appropriately redirect the report.

A. Where the Complainant’s Identity Is Known

Where the identity of the Complainant is known, the Title IX Coordinator or Deputy Title IX Coordinator will ensure that the Complainant receives a written explanation of all available resources and options and is offered the opportunity to meet promptly with the Title IX Coordinator to discuss those resources and options.

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2 Throughout these procedures, various College officials, such as the Title IX Coordinator, are assigned responsibility for performing specific functions. Named officials are authorized to delegate responsibility to other appropriate College officials and non-College consultants except where such delegation contravenes College policy. Additionally, named officials and their designees may consult with appropriate College officials, College Counsel and subject-matter experts.
In the initial assessment and meeting or correspondence with the Complainant, the Title IX Coordinator or Deputy Title IX Coordinator will:

- Assess the Complainant’s safety and well-being and offer the College’s support and assistance through available resources;
- Inform the Complainant that the Title IX Coordinator or Deputy 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 College officials in contacting law enforcement, 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 College and community resources including counseling, health and mental health services, victim advocacy, procedural advocacy, legal services, 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 (See “10. SUPPORTIVE MEASURES” below);
- Inform the Complainant of the right to file a Formal Complaint and seek resolution under these procedures, and provide the Complainant with an overview of these procedures, including Informal Resolution or Alternative Resolution (where appropriate);
- Inform the Complainant of the right to withdraw a Formal Complaint at any time and to decline or discontinue resolution under these procedures at any time, and that declining to participate in an investigation and/or the adjudicatory process under these procedures may limit the College’s ability to investigate meaningfully and respond to a report of prohibited conduct;
- As possible and appropriate, ascertain the Complainant’s preference for pursuing formal resolution, Informal Resolution 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 College prohibits retaliation, that retaliation constitutes prohibited conduct under the College’s Non-Title IX Procedures and that the College will take appropriate action in response to any act of retaliation;
Inform the Complainant of their rights afforded under the Gender-based Misconduct Policy; and
Communicate with appropriate College officials to determine whether the report triggers any Clery Act obligations, including the entry of the report in the daily crime log and/or issuance of a timely warning, and take steps to meet those obligations.

B. 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.

2. The College’s Actions Following an Initial Assessment

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

A. Where the Complainant Seeks Resolution Under These Procedures

In any case where the Complainant reports prohibited conduct and requests resolution under these procedures, the Complainant must provide the Title IX Coordinator with a written, signed Formal Complaint describing the facts alleged.

B. Where the Complainant Requests That No Formal Complaint Be Pursued Under These Procedures

The College 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 College 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 College community or doing so would impact the College’s ability to provide a safe and non-discriminatory environment for all members of the College community, including the Complainant.
The Title IX Coordinator or Deputy 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 an 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 College 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 or Deputy Title IX Coordinator will assist the parties with reasonable and available accommodations, which may include academic, housing, transportation, employment and other accommodations. (See “X. SUPPORTIVE MEASURES” below.) Supportive Measures provided to the Complainant may not unreasonably burden the Respondent.

C. College Determination That the Complainant’s Request(s) Can Be Honored

Where the Title IX Coordinator determines that the College can honor the Complainant’s request that no Formal Complaint be pursued under these procedures, the College 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 College community. Those steps may include offering the Complainant reasonable and available accommodations, 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.

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.
D. **College Determination That the Complainant’s Request(s) Cannot Be Honored**

Where the Title IX Coordinator determines that the College 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 College. The Formal Complaint will name the Complainant; thus, the Complainant’s identity will be revealed to the Respondent.

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

The Complainant is not required to participate in any proceedings that follow but will receive all notices issued under these procedures. However, if the Complainant declines to participate in an investigation and/or the adjudicative process under these procedures, the College’s ability to investigate meaningfully and respond to a report of prohibited conduct may be limited.

V. **Notice to the Parties of College Actions**

The Title IX Coordinator will promptly inform the Complainant of any actions undertaken by the College 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 College 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 “X. SUPPORTIVE MEASURES” below.) Supportive Measures become effective when notice of the Supportive Measures is provided.

VI. **Advisors and Support Persons**

At all stages under these procedures, students participating as a Complainant or Respondent in this process may be accompanied by an Advisor of Choice to any meeting or hearing to which they are required or eligible to attend.

Advisors may be any person, including an attorney, who is not a party or witness or otherwise involved in the case.
The Advisor of Choice is not an advocate. Advisors of Choice may not speak on the party’s behalf, participate directly in the process or otherwise interfere with meetings or proceedings.

Throughout the proceedings, Advisors may help the party prepare written submissions and may confer with the party. Advisors may not submit documents on behalf of a party.

By accepting the role of Advisor of Choice, the Advisor agrees to comply with the rules and processes set forth in the College’s Gender-based Misconduct Policy and these procedures, including rules regarding process privacy.

The College will not interfere with the parties’ rights to have an Advisor of Choice and fully expects Advisors to adhere voluntarily to the College’s Gender-based Misconduct Policy and these procedures. In extreme cases, where either the Title IX Coordinator or Hearing Chair determines that an Advisor’s conduct undermines the integrity of the Gender-based Misconduct Policy or these procedures, the Advisor will be prohibited from continuing to serve as Advisor in that case. The affected party will be permitted to obtain a substitute Advisor. If a party does not have an Advisor at the hearing, they will be provided one by the College.

VII. Written Submissions

All written submissions permitted by these procedures must be submitted by the parties. Written submissions from an Advisor or other individual made on behalf of a party will not be included in the investigative or hearing records.

Where a form is available 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.

VIII. 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 for 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.

**IX. Obligation of Parties Relative to Information Known to be False**

At all stages of the process, all participants are expected to provide truthful information to the best of their abilities and have an obligation not to provide information known to be false to any persons involved in the response to gender-based misconduct including, but not limited to, the Title IX Coordinator, Deputy Title IX Coordinators, investigators or Hearing Panelists. The College recognizes the difference between an unfounded report and grievance procedures which result in an outcome of not responsible.

**X. Supportive Measures**

Following a report of prohibited conduct, the Complainant will be provided information about a range of resources, support services and measures to protect the safety and well-being of the parties and to restore or preserve equal access to the College’s education programs or activities. Following the submission of a Formal Complaint or the initiation of an Alternative Resolution Process wherein the Respondent is notified, the Complainant and Respondent will be provided information about a range of resources, support services and measures available to support the student parties.

Supportive Measures may be issued based upon a party’s request or at the College’s own initiative. In all instances, the College 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 or whether the Complainant chooses to report the prohibited conduct to law enforcement.

Supportive Measures become effective when notice of the Supportive Measures is provided and are in effect until official notification in writing or until a student graduates.

Violations of Supportive Measures that are directives by a College official constitute prohibited conduct under the College’s Student Code of Conduct and Employee Handbook.
1. 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;
- leaves of absence; and
- restrictions on contact between the parties ("No-Contact” Orders)

2. Issuance of Supportive Measures

The Title IX Coordinator or their designee 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. Supportive Measures may not unreasonably burden a Respondent in the absence of a finding of responsibility for prohibited conduct, as defined in these procedures.

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 College 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.
3. 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 Supportive Measures.

Both parties may petition the Vice President for Student Affairs (VPSA) 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 VPSA. The Title IX Coordinator will also inform the non-petitioning party that a request has been filed and provide a copy of the request to that party.

If, based upon the request, the VPSA is considering issuing, modifying or removing a Supportive Measure, the VPSA will invite the non-petitioning party and the Title IX Coordinator to submit responses. The VPSA will establish a reasonable timeline for handling the matter, including deadlines for submissions.

If the VPSA determines that the Title IX Coordinator’s decision should be set aside, the VPSA 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 VPSA may, but is not required to, provide the Title IX Coordinator with guidance regarding appropriate alternate Supportive Measures.

The VPSA will provide a written decision to the parties and the Title IX Coordinator. The decision of the VPSA is final; there is no right to appeal.

XI. Emergency Removals Pending Resolution

The College retains the authority to remove a Respondent from the College’s program or activity on an emergency basis, where the College: (1) undertakes an individualized safety and risk analysis, and (2) determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of covered sexual harassment justifies a removal.
If it is determined that such removal is necessary, the Respondent will be provided notice and an opportunity to challenge the decision immediately following the removal, in accordance with section XI(1), below.

1. Requested Review of the Title IX Coordinator’s Decision Regarding Emergency Removal

The Respondent may petition the Vice President for Student Affairs (VPSA) in writing to review the Title IX Coordinator’s decision to impose an emergency removal. The Respondent may seek 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 VPSA. The Title IX Coordinator will also inform the non-petitioning party that a request has been filed and provide a copy of the request to that party.

If, based upon the request, the VPSA is considering modifying or lifting the emergency removal, the VPSA will invite the non-petitioning party and the Title IX Coordinator to submit responses. The VPSA will establish a reasonable timeline for handling the matter, including deadlines for submissions.

If the VPSA determines that the Title IX Coordinator’s decision should be set aside, the VPSA will instruct the Title IX Coordinator to vacate the prior decision. At that time, the Title IX Coordinator may impose alternate reasonable and appropriate emergency restrictions or supportive measures. The VPSA may, but is not required to, provide the Title IX Coordinator with guidance regarding appropriate alternate emergency restrictions or supportive measures.

The VPSA will provide a written decision to the parties and the Title IX Coordinator. The decision of the VPSA is final.

XII. Pending Criminal Investigations

In cases where there is a criminal investigation, the College’s process will run concurrently with such investigation. The College may grant temporary delays reasonably requested by law enforcement for evidence gathering.

XIII. Notice to Parties Upon the Issuance of a Formal Complaint

The Title IX Coordinator will draft and provide the Notice of Allegations to any party to the allegations of prohibited conduct. Such notice will occur as soon as practicable after the College receives a Formal Complaint of the allegations, if there are no extenuating circumstances.
The parties will be notified by their College email accounts if they are a student or employee, and by other reasonable means if they are neither.

The institution will provide sufficient time for the parties to review the Notice of Allegations and prepare a response before any initial interview.

1. **Contents of Notice**

The Notice of Allegations will include the following:

- Notice of the College’s Gender-based Misconduct Policy and Procedures;
- Notice of the allegations potentially constituting prohibited conduct, and sufficient details known at the time the Notice is issued, such as the identities of the parties involved in the incident, if known, including the Complainant; the conduct allegedly constituting covered sexual harassment; and the date and location of the alleged incident, if known;
- A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process; and
- A statement that the parties may have an advisor of their choice who may be, but is not required to be, an attorney, as required under 34 C.F.R. § 106.45(b)(5)(iv).

2. **Ongoing Notice**

If, in the course of an investigation, the College decides to investigate allegations about the Complainant or Respondent that are not included in the Notice of Allegations and are otherwise prohibited by these procedures, the College will notify the parties whose identities are known of the additional allegations by their College email accounts or other reasonable means.

The parties will be provided sufficient time to review the additional allegations in order to prepare a response before any initial interview regarding those additional charges.

**XIV. Dismissal of A Formal Complaint**

1. **Mandatory Dismissal of a Formal Complaint**

If any one of the elements set forth in Section 2 of these procedures (above) is not met, the Title IX Coordinator will notify the parties that the Formal Complaint is being dismissed for the purposes of these procedures.
Each party may appeal this dismissal using the procedure outlined in “Appeals” below.

2. Discretionary Dismissal of a Formal Complaint

The Title IX Coordinator may dismiss a Formal Complaint brought under these procedures, or any specific allegations raised within that Formal Complaint, at any time during the investigation or hearing if:

- A Complainant notifies the Title IX Coordinator in writing that they would like to withdraw the Formal Complaint or any allegations raised in the Formal Complaint;
- The Respondent is no longer a student or employed by the College; or
- If specific circumstances prevent the College from gathering evidence sufficient to reach a determination regarding the Formal Complaint or allegations within the Formal Complaint.

Any party may appeal a dismissal determination using the process set forth in “Appeals” below.

3. Notice of Dismissal

Upon reaching a decision that the Formal Complaint will be dismissed, the College will promptly send written notice of the dismissal of the Formal Complaint, or any specific allegation within the Formal Complaint, and the reason for the dismissal, simultaneously to the parties through their College email accounts. It is the responsibility of parties to maintain and regularly check their email accounts.

4. Notice of Removal

Upon dismissal of a Formal Complaint under these procedures, the College retains discretion to utilize other applicable College policies or procedures to determine if a violation of the College’s Gender-based Misconduct Policy or other College policy has occurred. If so, the College will promptly send written notice of the dismissal of the Formal Complaint under these procedures and removal of the allegations for further action under the appropriate College policy or procedure.
XV. **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 arising out of the same factual circumstances may be joined in one investigation when:

- There is more than one Complainant or Respondent;
- A cross complaint has been filed by a Respondent against a Complainant; or
- There are multiple, factually-related allegations and a joint hearing is deemed equitable by the Title IX Coordinator.

In determining whether to consolidate multiple reports or Formal Complaints, the Title IX Coordinator will consider whether consolidation is likely to result in reliable and more efficient outcomes without causing prejudice to a party or parties or confusion for the fact finders.

Where a matter is consolidated for investigation, the investigator will issue a single investigative record and report, and the matter will be adjudicated in one hearing. All parties to a consolidated complaint will receive the same written determination.

In all hearings involving multiple Respondents, the Hearing Panel will consider singly the sanctions and remedies appropriate for each Respondent.

If the alleged conduct, if true, includes conduct that would constitute prohibited conduct under these procedures and conduct that would cover prohibited conduct under the Title IX procedures, the Title IX procedures will be applied.

If the alleged conduct, if true, includes conduct that would constitute prohibited conduct under these procedures and other College policy or procedures (excluding the Title IX procedures), the College retains discretion in determining which policy or procedure will be applied in the investigation and adjudication of all of the allegations.

XVI. **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. 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.

Alternate Resolution will not involve mediation or any face-to-face meetings between the Complainant and the Respondent.

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.

Before the Alternate Resolution process commences, both the Complainant and the Respondent must agree to explore Alternate Resolution as a potential means of resolution.

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

If the process is terminated for any reason, the matter will be resolved 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 College 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 the Hearing Panel Chair 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, the Complainant or Respondent may withdraw from the Alternate Resolution process, and the Title IX Coordinator may also, at their discretion, terminate the process. The Title IX Coordinator will promptly notify the parties in writing of a termination of the Alternate Resolution process, and the Formal Complaint will be investigated and adjudicated pursuant to these procedures.
If the Respondent agrees to an Alternate Resolution that provides for a suspension, withdrawal or dismissal (i.e. expulsion) from the College, there will be a transcript notation consistent with College policy.

If both parties are satisfied with the Title IX Coordinator’s Alternate Resolution 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 each party has returned the signed agreement to the Title IX Coordinator, 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. The parties are expected to honor and comply with the terms of the Alternate Resolution. Noncompliance may be subject to proceedings under the Campus Code of Conduct.

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.

**XVII. 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 College may continue without a party’s participation, reach findings and issue sanctions.

The College will provide to a party whose participation is invited or expected written notice of the date, time, location, participants and purpose of all hearings, investigative interviews or other meetings with a party, with sufficient time for the party to prepare to participate.

The College will not intentionally schedule meetings or hearings at times when the Advisors of Choice for all parties are not available, provided that the Advisor acts reasonably in providing available dates and works collegially to find dates and times that meet all schedules.

The College’s obligations to investigate and adjudicate in a prompt timeframe under Title IX and other College policies apply to matters governed under these procedures, and the College cannot agree to extensive delays solely to accommodate the schedule of an Advisor of Choice. The determination of what is reasonable shall be made by the Title IX Coordinator or designee. The College will not be obligated to delay a meeting or hearing under this process more than five (5)
days due to the unavailability of an Advisor of Choice, and may offer the party the opportunity to
obtain a different Advisor of Choice or utilize one provided by the College. If a party’s Advisor
of Choice fails to fulfill their obligations or comply with the College’s policy and procedures for
adjudicating gender-based misconduct, the College reserves the right to remove the Advisor.

1. Declining to Participate in the Investigation

If a party declines to participate in the investigation, the party will forfeit the opportunity to
give a written opening statement and offer evidence at the hearing, including testimony.

Nonetheless, if a party who has 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 to allow 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.

2. Declining to Attend or Participate in the Hearing

Neither party is required to attend a hearing for the hearing to proceed. If, despite being
notified of the date, time and location of the hearing, either party is not in attendance, the
College may still proceed with the hearing, and may reach a determination of responsibility in
their absence, including through any evidence gathered during the investigation and at the
hearing.

The Hearing Panel cannot draw an inference about the determination of responsibility based
solely on a party’s absence from the hearing.
XVIII. Investigation of a Formal Complaint

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(s) will prepare a final investigative record and an investigative report. The investigative record is a compilation of all evidence directly related to the allegations in the Formal Complaint and may include 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 relevant evidence gathered. The investigator does not make any findings or recommendations as to 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 witnesses and the other party;
- review a draft investigative record and comment on it, in writing, before the investigator finalizes the record and prepares an investigative report; and
- review the investigative report and provide comment on it prior to the hearing.

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.
The College, and not the parties, has the burden of proof and the burden of gathering evidence (i.e. the responsibility of showing a violation of these procedures has occurred). This burden does not rest with either party, and either party may decide not to share their account of what occurred or may decide not to participate in an investigation or hearing. This does not shift the burden of proof away from the College and does not indicate responsibility.

2. **Time Frame of and Time Limitations During the Investigation**

The Title IX Coordinator or an investigator designated by the Title IX Coordinator will perform an investigation of the conduct alleged to constitute covered sexual harassment after issuing the Notice of Allegations under a reasonably prompt timeframe.

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

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

The parties may request extensions that will be granted, if reasonable, 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.

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.

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 the names of 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 whether any proffered witnesses have information that is relevant to the allegations in the Formal Complaint, and, accordingly, the investigator will determine which witnesses to interview.

Investigative interviews with the parties and any witnesses may be audio or video recorded.

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

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

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

The parties may listen to audio recordings of interviews of the other party and any witnesses during business hours, 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.

4. Evidentiary Materials

The investigator will gather available relevant evidentiary materials and evidence that are directly related to the allegations in the Formal Complaint submitted by the parties, including physical evidence, documents, communications between the parties and electronic records and media as appropriate.

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 whether the requested evidentiary materials are relevant to the allegations in the Formal Complaint, and accordingly the investigator will determine what evidentiary materials to seek to obtain.
A. Expert Testimony

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.

5. Relevant Evidence and Questions

“Relevant” evidence and questions refer to any evidence and questions that tend to make an allegation of sexual harassment more or less likely to be true.

“Relevant” evidence and questions do not include the following types of evidence and questions which are deemed “irrelevant” at all stages of these procedures:

1. Evidence and questions about the Complainant’s sexual predisposition or prior sexual behavior unless:
   a. They are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or
   b. They concern specific incidents of the Complainant’s prior sexual behavior with respect to the Respondent and are offered to prove consent. 34 C.F.R. § 106.45(6)(i).
2. Evidence and questions that constitute, or seek disclosure of, information protected under a legally-recognized privilege.
3. Any party’s medical, psychological and similar records unless the party has given voluntary, written consent. 85 Fed. Reg. 30026, 30294 (May 19, 2020).
4. Character evidence
5. Polygraph evidence

The investigator also will exclude and, as necessary, redact content that is impermissible under applicable law.

Exclusions and redactions will be noted and thereby become part of the investigative record.
Excluded or redacted content not included in the investigative record will not be considered by the Hearing Panel.

6. Draft Investigative Record and the Parties’ Review

Prior to the completion of the investigation, the parties will have an equal opportunity to inspect and review the evidence obtained through the investigation. The purpose of the inspection and review process is to allow each party an equal opportunity to meaningfully respond to the evidence prior to conclusion of the investigation.

Evidence that will be available for inspection and review by the parties will be any evidence that is directly related to the allegations raised in the Formal Complaint. It will include any:

- Evidence that is relevant, even if that evidence does not end up being relied upon by the College in making a determination regarding responsibility; and
- Inculpatory or exculpatory evidence (i.e. evidence that tends to prove or disprove the allegations) that is directly related to the allegations, whether obtained from a party or other source.

All parties must submit any evidence they would like the investigator to consider prior to when the parties’ time to inspect and review evidence begins.3

The College will send the evidence made available for each party and each party’s advisor, if any, to inspect and review in electronic form or hard copy. The College is not obligated to use any specific process or technology to provide the evidence and shall have the sole discretion in terms of determining format and any restrictions or limitations on access.

The parties will have ten (10) calendar days to inspect and review the evidence and submit a written response by email to the investigator. The investigator will consider the parties’ written responses before completing the investigative report.

The College will provide copies of the parties’ written responses to the investigator to all parties and their advisors, if any.4

The investigator has discretion whether to conduct any additional requested meetings, interviews or questioning.

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.

7. Inclusion of Evidence Not Directly Related to the Allegations

Evidence obtained in the investigation that in the reasoned judgment of the investigator is determined not to be directly related or relevant to the allegations in the Formal Complaint will be included in the appendices to the investigative report. Those appendices that include evidence that is not directly related or relevant to the allegations in the Formal Complaint will not be provided to the Hearing Panel, but will be shared with the Appeals Panel.

8. Final Investigative Record and Report

After review and consideration of the parties’ comments to the draft investigative record, the investigator will issue a final investigative record and an investigative report.

A. Content of the Final Investigative Record and Investigative Report

The investigative record is a compilation of all of the evidence directly related to the allegations in the Formal Complaint, and may include investigative interviews, evidentiary materials and expert testimony and materials, if any.

The investigative report will explain the scope of the investigation and summarize the relevant evidence gathered during the investigation. At their discretion, the investigator may identify contested and uncontested facts, highlight inconsistencies and address relevancy of evidence. The investigative report is not intended to catalog all evidence obtained by the investigator, but only to provide a fair summary of that evidence.

Only relevant evidence, including both inculpatory and exculpatory evidence (i.e. tending to prove and disprove the allegations), will be referenced in the investigative report.

The investigator may redact irrelevant information from the investigative report when that information is contained in documents or evidence that is/are otherwise relevant.  

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The investigative report is not evidence.

**B. Review of the Final Investigative Record and Investigative Report**

Upon completion, the final investigative record and investigative report will be provided to the parties and their advisor in electronic form or hard copy. The parties will have ten (10) calendar days to review and submit comments, in writing, on the final investigative report. The parties’ written comments and requests will become part of the final investigative record.

The investigator has discretion whether to conduct any additional requested meetings, interviews or questioning.

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.

**XIX. Hearings**

**1. Overview of Hearing Process**

Findings of responsibility and determinations regarding sanctions and remedies are made through a live hearing process conducted by a three-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 and remedies. Live hearings are not public.

The live hearing may be conducted with all parties physically present in the same geographic location or, at the College’s discretion, any or all parties, witnesses and other participants may appear at the live hearing virtually via a remote conferencing platform such as Zoom. This technology will enable participants simultaneously to see and hear each other. At its discretion, the College may delay or adjourn a hearing based on technological errors not within a party’s control.

All proceedings will be recorded, and a transcript of the proceedings will be made. The recording or transcript will be made available to the parties for inspection and review.
The parties are entitled to provide brief written opening statements, oral and written closing statements and to testify.

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

The parties will also be asked to submit a written Impact/Mitigation Statement which may be submitted up to the start of the hearing.

Throughout the hearing, the parties may never directly address each other.

The Hearing Panel and Hearing Chair conduct all questioning.

2. Presumption of Non-Responsibility and Standard of Proof

The Respondent will be presumed “not responsible” unless and until a Hearing Panel determines the Respondent is responsible.

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 is responsible under these procedures, the College’s Gender-based Misconduct Policy or any supplemental jurisdiction, it will dismiss the case. If the Hearing Panel finds that the Respondent is responsible under these procedures, the College’s Gender-based Misconduct Policy or supplemental jurisdiction, it will consider appropriate sanctions and remedies.

3. The Hearing Panel and Chair

The Hearing Panel will include faculty and staff members selected through an appropriate process established by the College. No member of the Hearing Panel will also have served as the Title IX Coordinator, Title IX investigator or advisor to any party in the case, nor may any member of the hearing body serve on the appeals body in the case. No member of the Hearing Panel will have a conflict of interest or bias in favor of or against Complainants or Respondents generally, or in favor of or against the parties to the particular case.

The position of Hearing Chair will be filled through an appropriate process established by the College.
The Hearing Chair and Hearing Panel members will receive annual training as required by law, including how to serve impartially, issues of relevance, how to apply the rape shield protections provided for Complainants and any technology to be used at the hearing.

The Hearing Chair will provide guidance to the Hearing Panel 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.

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 date, time and place of the hearing; the name of the Hearing Chair; and, if determined, the Hearing Panel members.

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

Upon receipt of written notice of the Hearing Chair and Hearing Panel members\(^6\), if a party believes that they have a potential conflict of interest with either a Hearing Panel member or the 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.

5. Request to Reschedule Hearing

Either party may request to have a hearing rescheduled. Absent extenuating circumstances, requests to reschedule must be submitted at least three (3) business days prior to the hearing to

\(^6\) Notice of the Hearing Chair may precede notice of the Hearing Panel members.
the Title IX Coordinator. A request to reschedule a hearing must be supported by a compelling reason for the delay. Given the number of individuals involved in a hearing and the attendant difficulty of scheduling and rescheduling it 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.

6. Newly Discovered Evidence

If after the issuance of the final investigative record and investigative report and prior to the issuance of the Hearing Panel decision, a party seeks to present a witness or introduce evidence not requested prior to the hearing and not disclosed to the investigator, the Hearing Chair may grant such a request. The request will be granted upon showing that the witness or evidence offers information that is directly related to the allegations in the Formal Complaint, 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.

7. Pre-Hearing Submissions by the Parties

Prior to a hearing, and upon providing the parties with copies of the final investigative record and report, the Title IX Coordinator will instruct the parties, in writing, that in addition to providing comments on the final investigative record and report, they will also have the opportunity to make certain decisions and requests regarding the conduct of the hearing. This process is designed to ensure that the hearing is conducted in an equitable, respectful and efficient manner.

The parties will be asked to make two pre-hearing submissions:

- First, the parties will be asked to submit in writing (1) opening statements and (2) the names of any requested witnesses, a list of proposed witnesses and a list of questions for those individuals who might testify, including themselves.\(^7\)

\(^7\) 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.
Second, once witnesses are approved, the parties will be provided with a tentative witness list, and the parties will be asked to submit in writing any proposed questions or topics for individuals who might testify, and for whom they have not yet submitted proposed questions or topics.

The parties will be given ten (10) business days for their first submissions. After the first submissions are received, and after the parties are provided with a tentative witness list, they will have five (5) business days for their second submission.

Within the timeframe for each submission, the parties may request extensions that will 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.

All pre-hearing submissions are optional but waived if not completed by the stated deadlines, including any approved extensions.

**A. Written Opening Statements**

The parties may prepare a written opening statement, not to exceed 2,500 words.

This statement is the party’s opportunity to tell the Hearing Panel why it should find in the party’s favor.

In presenting their side, the parties should be responsive to the investigative record by directly addressing and responding to specific information contained in the investigative record and citing specific page numbers.

The parties may want to call the Hearing Panel’s attention to specific interview statements or evidentiary materials contained in the investigative record. Again, the parties should include specific page citations from the final investigative record.
The parties may not add or address information not contained in the investigative 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.

B. Witness Requests and Proposed Questions

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, the party must submit a written request within ten (10) business days of the issuance of the final investigation record and report. Such a request should include:

1. The names of proposed witnesses, including the investigator, if the party requests that the investigator testify.
2. For each proposed witness, an explanation of why that individual’s presence is relevant and helpful to the Hearing Panel in determining responsibility. For example, the party should explain why a witness’s interview statement contained in the final investigative report is not sufficient for the Hearing Panel to make its finding. The parties may request only witnesses who were interviewed by the investigator during the investigative process.
3. A list of proposed questions or general topics that the party would like the Hearing Panel or Hearing Chair to pose to the other party, witnesses or themselves at the hearing. 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. It will also allow the Hearing Chair and Hearing Panel to make advance rulings on the relevancy of the questions or topics proposed.

8. Impact/Mitigation Statement

The parties will be permitted, but not required, to prepare a written Impact/Mitigation Statement relevant to any sanctions. The parties may submit the statement up until the start of a hearing. The statements will be distributed to the Hearing Panel only if the Hearing Panel finds the Respondent responsible. The statements will be distributed to both parties only upon a finding of responsibility, and, in that instance, when the Title IX Coordinator distributes the Hearing Panel’s written decision to the parties.
9. Hearing Process and Format

A. Overview of Hearing Process and Format

All hearings will be private, and the parties cannot waive the right to a live hearing. The only persons present may be the parties, their advisors, witnesses (when testifying), the Hearing Panel and Hearing Chair, the Title IX Coordinator, investigator and any staff necessary for the conduct of the hearing. Hearings may take place in-person or via a virtual platform at the discretion of the Title IX Coordinator.

The College may still proceed with the live hearing in the absence of a party, and may reach a determination of responsibility in their absence.

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.

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

B. Testimony

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

The Hearing Panel will determine the order in which the parties and witnesses will testify. Both the Complainant and the Respondent may testify or decline to testify and may make their election when their turn to testify arises. Witnesses cannot be compelled to participate in the live hearing and have the right not to participate in the hearing free from retaliation. If a party or witness testifies, they are expected to answer all questions asked.
At the conclusion of testimony by any individual, there will be a brief adjournment so that the parties may propose additional questions, which may be approved at the discretion of the Hearing Chair, in consultation with the Hearing Panel. A party who testifies will be given full opportunity to propose supplemental questions that they wish to answer. 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 propose questions for the witness. If a party proposes a witness not requested prior to the hearing, 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.

C. Closing Statements

The parties may provide both oral and written closing statements. This is the opportunity for the parties to marshal 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 2,000 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.

10. Determination on Findings of Responsibility

After closing arguments, the Hearing Panel may begin its deliberations. Deliberations will be in private and they will not be audio-recorded.
The Hearing Chair may participate in deliberations but may not vote. The Hearing Panel will make its decision based upon a majority vote. Deliberations will be completed as expeditiously as possible.

A. Deliberations on Finding of Responsibility; General Considerations for Evaluation of Evidence

Determinations of responsibility will be based on the relevant evidence accepted and reviewed by the Hearing Panel. Determinations regarding responsibility may be based in part, or entirely, on testimony, documentary, audiovisual and digital evidence, as warranted in the reasoned judgment of the Hearing Panel.

The Hearing Panel shall not draw inferences regarding a party or witness’s credibility based on the party or witness’s status as a Complainant, Respondent or witness, nor shall it base its judgments on stereotypes about how a party or witness would or should act under the circumstances.

Generally, credibility judgments should rest on the demeanor of the party or witness, the plausibility of their testimony, the consistency of their testimony and its reliability in light of corroborating or conflicting testimony or evidence.

Credibility judgments should not rest on whether a party or witness’s testimony is non-linear or incomplete, or if the party or witness is displaying stress or anxiety.

The Hearing Panel will afford the highest weight relative to other testimony to first-hand testimony by parties and witnesses regarding their own memory of specific facts that occurred. Both inculpatory and exculpatory (i.e. tending to prove and disprove the allegations) evidence will be weighed in equal fashion.

A witness’s testimony regarding third-party knowledge of the facts at issue will be allowed, but will generally be accorded lower weight than testimony regarding direct knowledge of specific facts that occurred.

Where a party or witness’s conduct or statements demonstrate that the party or witness is engaging in retaliatory conduct, including, but not limited to, witness tampering and intimidation, the Hearing Panel may draw an adverse inference as to that party or witness’s credibility.
B. Deliberations on Sanctions after a Finding of Responsibility

A Hearing Panel that finds the Respondent responsible will continue its deliberations to consider sanctions and remedies. Remedies should be designed to restore or preserve equal access to the College’s education programs or activities.

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 Union College disciplinary record, a known disciplinary record from another institution or a known criminal conviction, the Hearing Chair will also distribute to the Hearing Panel a copy of such disciplinary and/or criminal records prior to deliberating on sanctions and remedies. (Where an educational record, including a Union College disciplinary record, is being considered solely for sanctions, it will not be shared with the Complainant.)

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 Union College and elsewhere, and any criminal convictions;
- The goals of the College's Gender-based Misconduct Policy 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 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 College for a specified period of time
- Oral warnings
- Written reprimands
- Disciplinary probation for a stated period
- Suspension from the College for a stated period not to exceed five (5) years, or indefinitely with the right to petition the Hearing Panel in writing at any time for readmission after the academic term following the academic term in which the suspension occurred
  - Such petition will be submitted to the Title IX Coordinator no later than April 1 if the petition is for readmission for the fall term, and by November 1 if the petition is for readmission for the spring term.
  - If the Title IX Coordinator agrees with the Respondent’s petition, after consulting with appropriate professional colleagues and receiving approval of the Hearing Chair, the Title IX Coordinator may permit the readmission without the petition being considered by the Hearing Panel.
  - If the Hearing Panel denies the petition, the Respondent may not petition again until the next term and, in any event, may not petition for readmission for the same term denied by the Hearing Panel.
  - While on such suspension, the Respondent may not obtain academic credit at Union or elsewhere toward the completion of a Union degree.
- Dismissal (i.e., expulsion) from the College.

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

Sanctions and remedies will be effective immediately unless otherwise specified by the Hearing Panel.
11. Components of the Written Determination Regarding Responsibility

The written determination regarding responsibility will be issued simultaneously to all parties through their College email accounts or other reasonable means as necessary. The determination will include:

1. Identification of the allegations potentially constituting covered sexual harassment;
2. A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence and hearings held;
3. Findings of fact supporting the determination;
4. Conclusions regarding which section of the Code of Conduct, if any, the Respondent has or has not violated;
5. For each allegation:
   a. A statement of, and rationale for, a determination regarding responsibility;
   b. A statement of, and rationale for, any disciplinary sanctions the recipient imposes on the Respondent; and
   c. A statement of, and rationale for, whether remedies designed to restore or preserve equal access to the recipient’s education program or activity will be provided by the recipient to the Complainant; and
6. The recipient’s procedures and the permitted reasons for the Complainant and Respondent to appeal (described below in “Appeal”).

12. Timeline of Determination Regarding Responsibility

If there are no extenuating circumstances, the determination regarding responsibility will be issued by the College within ten (10) calendar days of the completion of the hearing.

13. Finality

The determination regarding responsibility becomes final either on the date that the College provides the parties with the written determination of the result of the appeal, if an appeal is filed consistent with the procedures and timeline outlined in “Appeals” below, or if an appeal is not filed, the date on which the opportunity to appeal expires.
14. Hearing Record

An audio and/or video recording will be made of all hearings, but not of deliberations. The parties may listen to the recording of the hearing during business hours at a secure and private campus location, with access facilitated by the Title IX Coordinator.

In the event of any failure rendering the 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. Immediately after issuing the Hearing Panel decision, Hearing Panel members will destroy any notes they took during the hearing.

The hearing record will include: the audio recording 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 during the hearing and the parties’ Impact/Mitigation Statements (if considered by the Hearing Panel). The hearing record may also include a transcript of the hearing.

XX. Appeals

Each party may appeal (1) the dismissal of a Formal Complaint or any included allegations and/or (2) a determination regarding responsibility. To appeal, a party must submit their written appeal within ten (10) calendar days of being notified of the decision, indicating the grounds for the appeal.

The limited grounds for appeal available are as follows:

- Procedural irregularity that affected the outcome of the matter (i.e. a failure to follow the College’s own procedures);
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
• The Title IX Coordinator, investigator(s) or decision-maker(s) had a conflict of interest or bias for or against an individual party, or for or against Complainants or Respondents in general, that affected the outcome of the matter; or
• The sanctions or remedies are not commensurate with the injury/violation or are unjust.

The appeal statement must set forth:

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

The appeal statement will be limited to 3,500 words. Appeals should be submitted in electronic form using Arial or Times New Roman 12-point font, and single-spaced. Appeals should use footnotes, not endnotes. Appeals that do not meet these standards may be returned to the party for correction, but the time for appeal will not be extended unless there is evidence that technical malfunction caused the appeal document not to meet these standards.

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

The submission of appeal stays any sanctions for the period of time which the appeal is pending. Supportive measures and remote learning opportunities remain available during the pendency of the appeal.

If a party appeals, the College will, as soon as practicable, notify the other party in writing of the appeal; however, the time for appeal shall be offered equitably to all parties and shall not be extended for any party solely because the other party filed an appeal.

Appeals will be decided by an Appeal Panel appointed by the Title IX Coordinator. Panel members will be free of conflict of interest and bias, and will not serve as an investigator, Title IX Coordinator or hearing decision maker in the same matter.

The Appeal Panel will establish a reasonable schedule for issuing a written decision, typically no later than ten (10) business days after receipt of the parties’ submission or the time for submission has expired.

Any decision will be based solely upon the hearing record and, in appropriate cases, upon a showing of new evidence relevant to the grounds for appeal.
The decision must be by a majority vote of the Appeal Panel and will include the rationale for the Appeal Panel’s decision.

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 if possible for a new hearing, or remand a case to a newly composed Hearing Panel if there were procedural violations; or
- remand a case to the original investigator if possible for a new investigation, or remand a case to a new investigator if there were procedural violations in the investigation.

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.

Outcome of the appeal will be provided in writing simultaneously to both parties, and include rationale for the decision.

1. Request for a Stay Pending Appeal

The Appeal Panel has discretion to stay any sanctions pending a final decision on the appeal. It 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 a written response to the Title IX Coordinator.

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.
XXI. Transcript Notations and Withholding Degrees

Pursuant to the College Registrar’s 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 College while a Formal Complaint is pending.

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

Degrees will not be awarded to the Respondent while a Formal Complaint under these procedures is pending. The College 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.

The College will temporarily note the Respondent’s transcript once a Formal Complaint is made pursuant to these procedures. The College will temporarily note the Respondent’s transcript if the Respondent has been temporarily suspended pursuant to these procedures. These temporary notations may not be appealed and will be removed upon resolution of the underlying matter.
XXII. Retaliation

The College will keep the identity of any individual who has made a report or complaint of sex discrimination confidential, including the identity of any individual who has made a report or filed a Formal Complaint of prohibited conduct under these procedures, any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, and any witness, except as permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing or judicial proceeding under this Title IX Grievance Policy.

No person may intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX of the Education Amendments of 1972 or its implementing regulations.

No person may intimidate, threaten, coerce or discriminate against any individual because the individual has made a report or complaint, testified, assisted or participated or refused to participate in any manner in an investigation, proceeding or hearing under this Title IX Grievance Policy.

Any intimidation, threats, coercion or discrimination for the purpose of interfering with any right or privilege secured by Title IX or its implementing regulations constitutes retaliation. This includes any charges filed against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but that come from the same facts or circumstances as a report or complaint of sex discrimination or a report or Formal Complaint of sexual harassment.