

## **Appendix A: Procedures for the Resolution of Reports of Conduct by Students Within the Scope of Title IX\***

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<sup>1</sup>:

- 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. These procedures apply **only** to incidents falling within the Final Rule’s definition of sexual harassment.

Union College remains committed to addressing any violations of its policies, even those not meeting the narrow standards defined under the Title IX Final Rule. Reports of sexual or related misconduct falling outside the scope of these Procedures may be address through the College’s Gender-based Misconduct Policy.

To the extent that alleged prohibited conduct falls outside these procedures, or misconduct falling outside these procedures is discovered in the course of investigating prohibited conduct covered by these procedures, the institution retains authority to investigate and adjudicate the allegations under these procedures or under other applicable College policies or procedures through a separate grievance proceeding.

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\*This Procedure was edited to correct errors identified on January 6, 2022. This version reflects those corrections.

<sup>1</sup> See, 85 Fed. Reg. 30026 (May 19, 2020). The full text of the Final Rule and its extensive Preamble are available here: <http://bit.ly/TitleIXReg>

The elements established in these procedures have no effect 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**

### **A. Effective Date**

The effective date of these procedures is on August 27, 2020. These procedures will apply in all cases where a Formal Complaint of prohibited conduct under these procedures is made on or after August 27, 2020.

Where the date of the alleged prohibited conduct precedes the effective date of these procedures, the definitions of prohibited conduct 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.

### **B. Identity of the Complainant**

These procedures will apply to Complainants, who at the time of filing a formal complaint, are participating in or attempting to participate in the education program or activity of the College, regardless when the incident occurred. This includes, but is not limited to, current students, (whether applicant, admitted, currently enrolled or on leave of absence; includes alumni or former students attempting to participate in a college activity) and current employees (applicant, hired but not yet working or employed).

### **C. Identity of the Respondent**

This procedure will apply to Respondents, who at the time of filing a formal complaint, are participating in or attempting to participate in the education program or activity of the College, regardless when the incident occurred. This includes, but is not limited to, current students, (whether applicant, admitted, currently enrolled or on leave of absence; includes alumni or former student attempting to participate in a college activity).

## **II. Time limits to File Formal Complaints**

### **A. Formal Complaint**

For the purposes of these Title IX 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 within College’s education program or activity and requesting initiation of these procedures to investigate the allegation of.

## **B. Eligibility to File a Formal Complaint**

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 Complainant and/or Respondent is no longer a student or employee 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.

## **III. The Response to a Report of Prohibited Conduct**

### **A. The College’s Actions Following an Initial Assessment**

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

#### ***1. Where the Complainant Seeks Resolution Under These Procedures***

In any case where the Complainant reports prohibited conduct and requests resolution under these procedures, the Complainant must provide the Title IX Coordinator a written, signed complaint describing the facts alleged. Complainants are only able to file a Formal Complaint under these procedures if they are currently participating in, or attempting to participate in, the education programs or activities of the College (See, Section II(3)). For Complainants who do

not meet these criteria, the College will utilize the Procedures for the Resolution of Reports of Gender-based Misconduct Against Students.

## ***2. 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). Supportive Measures become effective when notice of the Supportive Measures is provided.

## **IV. Acceptance of Responsibility**

The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the resolution process, up until a final decision is rendered. If the Respondent accepts responsibility, the Title IX Coordinator, or their designee, decides that the individual is in violation of the Title IX Policy.

The Title IX Coordinator, or their designee, then determines appropriate responsive actions, which are promptly implemented in order to effectively stop the harassment, discrimination, and/or retaliation; prevent its recurrence; and remedy the effects of the conduct, both on the Complainant and the community. The Title IX Coordinator will then refer the matter to the Office of Community Standards for the execution of sanctions, where appropriate.

If the Respondent accepts responsibility for all of the alleged policy violations and the Title IX Coordinator, or designee, has determined appropriate sanction(s) in collaboration with the Office of Community Standards or responsive actions, which are promptly implemented, the process is over. The Complainant will be informed of this outcome.

If the Respondent accepts responsibility for some of the alleged policy violations and the Title IX Coordinator, or their designee, has determined appropriate sanction(s) or responsive actions in collaboration with the Office of Community Standards, which are promptly implemented, for those violations, then the remaining allegations will continue to be investigated and resolved. The Complainant will be informed of this outcome. The parties may still be able to seek informal resolution on the remaining allegations, subject to the stipulations above.

## **V. Advisors And Support Persons**

By accepting the role of Advisor of Choice, the advisor agrees to comply with the rules and processes set forth in the College's Title IX 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 Title IX 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 Title IX 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.

#### **VI. Written Submission**

For all written submissions permitted by these procedures the documents 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.

#### **VII. Preservation of Information and Tangible Material**

Preservation of information and tangible material relating to alleged prohibited conduct is essential for investigations under these procedures as well as law enforcement investigations. Therefore, all persons involved in these procedures, whether as the Complainant, the Respondent, or a witness, are encouraged to preserve all information and tangible material relating to the alleged prohibited conduct. Examples of evidence include, but are not limited to, 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.

#### **VIII. 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.

#### **IX. 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 11.1, below.

#### **X. 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 with respect to an emergency removal 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 with respect to a petition regarding emergency removal.

## **XI. 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 institution receives a Formal Complaint of the allegations, if there are no extenuating circumstances.

The parties will be notified by their institutional 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.

The Title IX Coordinator may determine that the Formal Complaint must be dismissed on the mandatory grounds identified in these procedures and will issue a Notice of Dismissal. If such a determination is made, any party to the allegations of sexual harassment identified in the Formal Complaint will receive the Notice of Dismissal in conjunction with, or in separate correspondence after, the Notice of Allegations.

### **A. Contents of Notice**

The Notice of Allegations will include the following:

- Notice of the College's Title IX 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.
- 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);

- A statement that before the conclusion of the investigation, the parties may inspect and review evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including the evidence upon which the institution does not intend to rely in reaching a determination regarding responsibility, and evidence that both tends to prove or disprove the allegations, whether obtained from a party or other source, as required under 34 C.F.R. § 106.45(b)(5)(vi);
- A statement that the Student Handbook prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

## **B. Ongoing Notice**

If, in the course of an investigation, the institution 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 institution will notify the parties whose identities are known of the additional allegations by their institutional email accounts or other reasonable means.

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

## **XII. Dismissal of A Formal Complaint**

### **A. Mandatory Dismissal of a Formal Complaint**

If any one of these elements set forth in section 2 of these procedures are 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.

### **B. 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 enrolled in 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.

### **C. Notice of Dismissal**

Upon reaching a decision that the Formal Complaint will be dismissed, the institution 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 institutional email accounts. It is the responsibility of parties to maintain and regularly check their email accounts.

### **XIII. Alternate Resolution of a Formal Complaint**

In every case, the Title IX Coordinator has discretion to determine whether the matter is appropriate for Alternate Resolution, an administrative process, and to determine the appropriate terms. If Alternate Resolution would be appropriate, the Title IX Coordinator will inform the parties that Alternative Resolution is an option. 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. 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. Both parties must agree to Alternate Resolution for the process to move forward and will not commence if there is not unilateral interest in the process.

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 University records in the matter, including any records or reports prepared during an investigation.

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

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

At any time before a written agreement is effective, the Complainant or the Respondent may withdraw from the Alternate Resolution process, and the Title IX Coordinator may also, at their discretion, terminate the process.

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

If both parties are satisfied with the Title IX Coordinator's recommendation, the matter will be resolved with a written agreement. The Title IX Coordinator will provide each party, separately, with a copy of the proposed agreement for the party to review, sign, and return.

Once both parties have 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.

#### **XIV. 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, reaching findings and issuing 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 on dates where 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) calendar 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.

#### **A. Declining to Participate in the Investigation**

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

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

#### **B. 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 institution may still proceed with the live hearing in the absence of a party, and may reach a

determination of responsibility in their absence, including through any evidence gathered that does not constitute a “statement” by that party.<sup>2</sup>

If a party does not submit to cross-examination, the Hearing Panel cannot rely on any prior statements made by that party in reaching a determination regarding responsibility, but may reach a determination regarding responsibility based on evidence that does not constitute a “statement” by that party.<sup>3</sup>

The Hearing Panel Chair cannot draw an inference about the determination regarding responsibility based solely on a party’s absence from the live hearing or refusal to answer cross examination or other questions.<sup>4</sup>

## **XV. Investigation of a Formal Complaint**

### **A. 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(s). The investigative report will explain the scope of the investigation and summarize the relevant evidence gathered. The investigator(s) 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.

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<sup>2</sup> 85 Fed. Reg. 30026, 30361 (May 19, 2020).

<sup>3</sup> A verbal or written statement constituting part or all of the sexual harassment itself is not a “prior statement” that must be excluded if the maker of the statement does not submit to cross-examination about that statement. In other words, a prior statement would not include a document, audio recording, audiovisual reading, and digital media, including but not limited to text messages, emails, and social media postings, that constitute the conduct alleged to have been the act of sexual harassment under the formal complaint. See, OCR Blog (May 22, 2020), available at <https://www2.ed.gov/about/offices/list/ocr/blog/20200522.html>

<sup>4</sup> See 34 C.F.R. §106.45(b)(6)(i).

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:

- An equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;
- Not be restricted to discuss the allegations under investigation or to gather and present relevant evidence;
- The same opportunities to have others present during any proceeding, including the opportunity to be accompanied to any related meeting or proceeding by their Advisor of Choice, who may be, but is not required to be, an attorney.
- Written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings with sufficient time for the party to prepare to participate;
- Equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a Formal Complaint, including the evidence upon which the College does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation;
- Access to evidence prior to completion of the investigative report for inspection and review in an electronic format or hard copy;
- A minimum of ten (10) calendar days to submit a written response, which the investigator will consider prior to completion of the investigative report;
- Access to all such evidence (along with their advisor) subject to the parties' inspection and review as described above at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for the purposes of cross-examination; and
- An investigative report that fairly summarizes relevant evidence, that will be provided to the parties and their advisors a minimum of ten (10) calendar days prior to a hearing in an electronic format or hard copy for their review and written response.

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.

### **B. 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 under a reasonably prompt timeframe of the conduct alleged to constitute covered sexual harassment after issuing the Notice of Allegations.

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(s) 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 Title IX Coordinator. 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.

### **XVI. Investigative Interview Process**

The investigator(s) will gather information from the Complainant, the Respondent, and other individuals who have relevant information.

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

The investigator(s) has the discretion to determine whether any proffered witnesses have information that is directly related to the allegations in the Formal Complaint, and, accordingly, the investigator(s) will determine which witnesses to interview.

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

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

Parties and witnesses will have access to listen to audio and/or video records of their own interviews in secured settings.

The parties will be provided with 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(s) will either reconstruct the interview with input from the interviewee or re-conduct the interview, as the investigator(s) deems necessary. The reconstructed interview statement will become part of the investigative record. The failure will not constitute grounds for appeal.

#### **A. Evidentiary Materials**

The investigator(s) will gather available relevant evidentiary materials and evidence that is 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(s) to seek to obtain.

The investigator(s) have the discretion to determine whether the requested evidentiary materials are directly related to the allegations in the Formal Complaint, and, accordingly the investigator(s) will determine what evidentiary materials to seek to obtain.

The Final Rule requires that the College allow parties to submit evidence that is directly related to the allegations and is (1) provided by expert witnesses, (2) character evidence, and (3) polygraph evidence.

## **B. Relevant Evidence and Questions**

“Relevant” evidence and questions refer to any questions and evidence that tends 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).

The investigator(s) will also 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.

## **C. 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 the 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:

- 4) Evidence that is relevant, even if that evidence does not end up being relied upon by the College in making a determination regarding responsibility;

- 5) 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(s) to consider prior to when the parties' time to inspect and review evidence begins.<sup>5</sup>

The institution will send the evidence made available for each party, if any, to inspect and review [through an electronic format or a hard copy.] The College is not under an obligation 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, including but not limited to links, expiration dates, password protection, and watermarking.

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

The institution will provide copies of the parties' written responses to the investigator(s), to all parties, if any.<sup>6</sup>

The investigator(s) have 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 Title IX Coordinator. 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) calendar days or any approved extensions will result in a forfeiture of the right to do so later.

Any evidence subject to inspection and review will be available at any hearing, including for purposes of cross-examination.

#### **D. Inclusion of Evidence Not Directly Related to the Allegations**

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<sup>5</sup> See, 85 Fed. Reg. 30026, 30307 (May 19, 2020).

<sup>6</sup> See, 85 Fed. Reg. 30026, 30307 (May 19, 2020).

Evidence obtained in the investigation that is determined in the reasoned judgment of the investigator(s) not to be directly related to the allegations in the Formal Complaint will be included in the appendices to the investigative report.

### **E. 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.

#### **1) 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(s) 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(s), but only to provide a fair summary of that evidence.

Only relevant evidence (including both inculpatory and exculpatory – i.e. tending to prove and disprove the allegations - relevant evidence) 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.<sup>7</sup>

The investigative report is not evidence.

### **F. 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 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(s) has discretion whether to conduct any additional requested meetings, interviews, or questioning.

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<sup>7</sup> See, 85 Fed. Reg. 30026, 30304 (May 19, 2020).

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) calendar days or any approved extensions will result in a forfeiture of the right to do so later.

## **XVII. Hearings**

### **A. Overview of Hearing Process**

Findings of responsibility and determinations regarding sanctions and remedies are made through a live hearing process conducted by a three (3) member Hearing Panel and, if deemed necessary by the Title IX Coordinator, a non-voting Facilitator. The hearing is intended to provide the parties with a fair opportunity to present relevant information to the Hearing Panel and enable the Hearing Panel to make informed decisions regarding responsibility and sanctions/remedies. Live hearings are not public.

The live hearing may be conducted with all parties physically present in the same geographic location, or, at 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 produced. That recording or transcript will be made available to the parties for inspection and review.

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

Through a pre-hearing submission process explained below, the parties are required to propose questions/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. Impact/Mitigation Statements are not evaluated during the Panel's deliberations relative to findings; they are used only during the deliberations of sanctions, when applicable.

Questioning of the parties and witnesses will be conducted by the Hearing Panel and Hearing Chair. Cross examination of the opposing party(ies) and witnesses will be conducted by the advisors for each party.

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

### **B. 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 these procedures, the College’s Title IX 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 Title IX Policy or supplemental jurisdiction, it will consider appropriate sanctions and remedies.

### **C. 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 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, including 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.

#### **D. 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) calendar 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<sup>8</sup>, if a party believes that they have a potential conflict of interest with either a Hearing Panel member or Hearing Chair, the party should notify the Title IX Coordinator, who will forward the notification to the Hearing Chair. The notification must be in writing, made within three (3) calendar 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.

#### **E. 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 (5) calendar days prior to the hearing. A request to reschedule a hearing must be supported by a compelling reason for the delay. Given the number of individuals involved in a hearing, and the attendant difficulty of scheduling and rescheduling them in a timely manner, it may not be possible to accommodate all scheduling requests. The Hearing Chair may also reschedule a hearing, without a request by the parties, when there is reasonable cause to do so.

#### **F. 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

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

evidence not requested prior to the hearing and not disclosed to the investigator(s), the Hearing Chair may grant such request upon a showing that the witness or evidence has 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(s) 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.

### **G. 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, or designee, 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) names of any requested witnesses a list of proposed witnesses along with a list of questions that they wish to ask, or topics that they would like to explore during cross examination of individuals who might testify, including themselves<sup>9</sup>, as explained below.
- Second, once witnesses are approved, the parties will be provided with a tentative witness list and the parties will then 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 and topics for.

The parties will be given ten (10) calendar 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) calendar days for their second submission.

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<sup>9</sup> 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.

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.

## **H. Written Opening Statements**

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

This statement is the parties' 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 to 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.

## **I. 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 the ten (10) calendar days of the issuance of the final investigation report and record. Such a request should include:

1. The names of proposed witnesses, including the investigator(s), if the party requests that the investigator(s) testify.
2. For each proposed witness an explanation of why the individual's presence is relevant and helpful to the Hearing Panel in determining findings. 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(s) during the investigative process.

3. A list of proposed questions for or general topics that the party intends to ask the other party and each witness during cross examination. 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.

## **J. 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 would be distributed to the Hearing Panel only if the Hearing Panel finds the Respondent responsible. The statements would 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.

## **K. Hearing Process and Format**

### **1. 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(s), and any staff necessary for the conduct of the hearing.

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, including through any evidence gathered that does not constitute a "statement" by that party.<sup>10</sup>

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:

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<sup>10</sup> 85 Fed. Reg. 30026, 30361 (May 19, 2020).

- 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.

## **L. 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.

### **1. Questioning by the Hearing Chair and Hearing Panel**

The Hearing Panel and Chair will question the parties and the witnesses first. When the Hearing Panel and Hearing Chair have concluded questioning a particular party or witness, each parties' advisor will then be provided an opportunity to cross examine the other party or witness.

### **2. Cross Examination by the Advisor**

The parties are not permitted to conduct cross-examination; it must be conducted by the advisor. As a result, if a party does not select an advisor, the institution will select an advisor to serve in this role for the limited purpose of conducting the cross-examination at no fee or charge to the party.

If a party does not attend the live hearing, the party's advisor may appear and conduct cross-examination on their behalf.<sup>11</sup>

If neither a party nor their advisor appear at the hearing, the College will provide an advisor to appear on behalf of the non-appearing party.<sup>12</sup>

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<sup>11</sup> 85 Fed. Reg. 30026, 30340 (May 19, 2020).

<sup>12</sup> See, 85 Fed. Reg. 30026, 30339-40 (May 19, 2020).

### **3. Live-Cross Examination Procedure**

During live-cross examination the advisor will be permitted to ask the other party or witness relevant questions and follow-up questions, including those challenging credibility directly, orally, and in real time.

Before any cross-examination question is answered, the Hearing Chair will determine if the question is relevant. Cross-examination questions that are duplicative of those already asked, including by the Hearing Chair may be deemed irrelevant if they have been asked and answered.

During the Parties' cross-examination, the Hearing Chair will have the authority to pause cross-examination at any time for the purposes of asking the Hearing Chair's own follow up questions; and any time necessary in order to enforce the established rules of decorum.

If, following cross examination of a party or witness by an advisor, the Hearing Panel has any additional questions, they may pose those questions. The advisors will then have one opportunity to pose additional questions of the other party or witness. Questioning of each party or witness will conclude with the Hearing Chair having the opportunity to ask a final round of questions.

### **4. Effect of Not Submitting to Cross Examination**

If federal regulations precluding consideration of statements by persons who do not submit to cross-examination are determined to be enforceable, the Hearing Panel cannot rely on any prior oral or written statements made by a party or witness to reach a determination regarding responsibility. However, unless prohibited by federal law or regulation, a Hearing Panel may rely upon evidence involving a party or witness that does not constitute a "statement" under enforceable regulatory authority.

The Hearing Panel cannot draw an inference about the determination regarding responsibility based solely on a party's absence from the live hearing or refusal to answer cross examination or other questions.

### **5. Waiver of Cross Examination**

Should a party or the party's advisor choose not to cross-examine the other party or a witness, the party shall affirmatively waive cross-examination through a written or oral statement to the Hearing Chair and Panel. A party's waiver of cross-examination does not eliminate the ability of the Hearing Panel to use statements made by the party.

### **A. 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 2000 words and to the evidence contained in the investigative record and hearing. The written statements will be distributed to the other party, the Hearing Chair, and the Hearing Panel for their review.

### **M. 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 Panel will make its decision based upon a majority vote. Deliberations will be completed as expeditiously as possible.

#### **1. 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. While the opportunity for cross-examination is required in all Title IX hearings, determinations regarding responsibility may be based in part, or entirely, on

documentary, audiovisual, and digital evidence, as warranted in the reasoned judgment of the Hearing Panel Chair.

The Hearing Panel Chair shall not draw inferences regarding a party or witness' credibility based on the party or witness' status as a Complainant, Respondent, or witness, nor shall it base its judgments in 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.

Still, credibility judgments should not rest on whether a party or witness' testimony is non-linear or incomplete, or if the party or witness is displaying stress or anxiety.

Hearing Panelists 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 evidence (i.e. tending to prove and disprove the allegations) will be weighed in equal fashion.

Except where specifically barred by the Title IX Final Rule, a witness' 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.

The Final Rule requires that the College allow parties to call character witnesses to testify. While the character witnesses will be allowed to testify and be cross-examined as required by the Final Rule, the Hearing Panel Chair will be instructed to afford very low weight to any non-factual character testimony of any witness.

The Final Rule requires that the College admit and allow testimony regarding polygraph tests ("lie detector tests") and other procedures that are outside of standard use in academic and non-academic conduct processes. While the processes and testimony about them will be allowed to testify and be cross-examined as required by the Final Rule, the Hearing Panel Chair will be instructed to afford lower weight to such processes relative to the testimony of fact witnesses.

Where a party or witness' 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' credibility.

## **N. Deliberations on Sanction after a Finding or 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 institution's education program or activity.

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, prior to deliberating on sanctions and remedies, the Hearing Chair will also distribute to the Hearing Panel a copy of such disciplinary and/or criminal records. (Where an educational record, including a Union 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 Title IX 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 trimester; by November 1 if the petition is for readmission for the winter trimester; and, January 1 if the petition is for readmission for the spring trimester
  - 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 trimester and, in any event, may not petition for readmission for the same trimester denied by the Hearing Panel.
  - While on such suspension, the student 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.

### **O. Components of the Written Determination Regarding Responsibility**

The written determination regarding responsibility will be issued simultaneously to all parties through their College email account, 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").

#### **P. 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.

#### **Q. Hearing Record**

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

In the event of any failure rendering the audio and/or video 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 and/or video 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.

#### **R. Finality**

The determination regarding responsibility becomes final either on the date that the institution 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.

### **XVIII. 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 to the Title IX Coordinator via email 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 institution’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;
- 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 3500 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 the ten (10) calendar days or any approved extension constitutes waiver of the right to appeal.

If a party appeals, the institution 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 Appeals Panel appointed by the Title IX Coordinator who will be free of conflict of interest and bias, and will not serve as investigator(s), Title IX Coordinator, or Hearing Panel Chair in the same matter.

The Appeal Panel will establish a reasonable schedule for issuing a written decision, typically no later than fourteen(14) calendar 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(s) 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(s) from which it originated for further investigation.

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

## **XIX. 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 to the Title IX Coordinator a written response.

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

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

## **XX. Transcript Notations and Withholding Degrees**

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

- dismissal (i.e., expulsion) after a finding of responsibility;
- suspension after a finding of responsibility; and
- withdrawal from the 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.

## **XXI. 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.