

Appendix B: Procedures for the Resolution of Reports of Conduct by Employees Within the Scope of Title IX

I. Introduction

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, co-curricular, athletic or other program, in the context of admissions or employment, or other 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 or employee's ability to equally access our educational and employment 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 that¹:

- 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 reports against an employee 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. Other forms of discrimination, including acts of sexual harassment that fall outside the jurisdiction of Title IX and this procedure, are addressed in other College policies, including the Policy Prohibiting Discrimination, Harassment & Retaliation in Employment (“Policy Prohibiting Discrimination, Harassment and Retaliation in Employment”).

All reports of sexual harassment that are brought against an employee, whether reported under this Policy or under the Policy Prohibiting Discrimination, Harassment and Retaliation in

¹ 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>

Employment will be reviewed by the Title IX Coordinator & Equal Opportunity Specialist or designee and the Associate Director of HR Compliance & Training to determine whether the conduct alleged falls under this Policy, the College's Policy Prohibiting Discrimination, Harassment and Retaliation in Employment and/or other College policies.

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 College retains authority to investigate and adjudicate the allegations under these procedures or under the procedures set forth in the Policy Prohibiting Discrimination, Harassment and Retaliation in Employment or other applicable College policies or procedures through a separate grievance proceeding.

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 any 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.

1. 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).

2. Identity of the Respondent

This procedure will apply to Respondents, who are current staff, administrators, and faculty (applicant, hired but not yet working or employed) at the time of filing a Formal Complaint, regardless when the incident occurred.

II. Time limits to File Formal Complaints

1. 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 prohibited conduct.

2. Eligibility to File a Formal Complaint

This procedure applies to address and resolve Formal Complaints against a current staff member, administrator or faculty member. For complaints against other Union College Community members or former employees, please see Appendix A to the Title IX Policy (for complaints against students) or the College's Policy Prohibiting Discrimination, Harassment and Retaliation in Employment

To promote timely and effective review, the College strongly encourages Complainants and other persons with knowledge of possible violations of the College's Title IX Policy, and mandates Responsible Employees who receive a report, observe, or otherwise obtain knowledge of possible violations of the Title IX 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 current employee.

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, taking appropriate steps to end any prohibited conduct, prevent its recurrence, and address its effects.

III. The Response to a Report of Prohibited Conduct

1. Initial Assessment

Upon receipt of a report of alleged prohibited conduct, the Title IX Coordinator² will make an initial assessment of the reported information and respond to any immediate health or safety concerns raised by the report.

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

2. Where the Complainant's Identity Is Known

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

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

- Assess the complainant's safety and well-being and offer the College's support and assistance through available resources;
- Inform the complainant that the Title IX Coordinator will maintain the complainant's privacy to the greatest extent possible and disclose information only as necessary pursuant to these procedures;
- Inform the complainant of their right to seek medical treatment (including a sexual assault forensic examination) and explain the importance of obtaining evidence and preserving forensic and other evidence;
- Inform the complainant of their right to contact law enforcement, be assisted by College officials in contacting law enforcement, or decline to contact law enforcement, and their right to seek a protective order;
- Inform the complainant that the criminal justice system uses different standards of proof and evidence than these procedures and that any questions about whether the reported prohibited conduct constitutes a penal law violation should be addressed by law enforcement;
- Inform the complainant about College and community resources, including counseling, health, and mental health services; victim advocacy; procedural advocacy; legal resources; visa and immigration assistance; student financial aid; and other resources both on campus and in the community, and how to request or contact such resources;
- Inform the Complainant of the right to seek appropriate and available Supportive Measures and how to request such measures;
- Inform the Complainant of the right to file a Formal Complaint and seek resolution under these procedures; provide the complainant with an overview of these procedures, including Informal Resolution (where appropriate); and inform the complainant of the right to withdraw a Formal Complaint at any time and to decline or discontinue resolution under these procedures at any time, but that declining to participate in an investigation

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, the College Counsel, and subject-matter experts.

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 Policy Prohibiting Discrimination, Harassment and Retaliation in Employment, and that the College will take appropriate action in response to any act of retaliation; 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.

3. 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:

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 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 2.3).

B. 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, will author a summary of the conduct alleged within the report, the conduct which the Respondent is accepting responsibility for, and any mitigating or aggravating factors considered.

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.

If the Respondent is a faculty member the Title IX Coordinator will refer the matter to the Faculty Sanctioning Panel (“FSP”), which shall be composed of five (5) tenured members of the Faculty Review Board (“FRB”). The members of the FSP will be responsible for reviewing the Title IX Coordinator’s written report and considering whether to dismiss or otherwise discipline the faculty member for cause. If the FSP believes that dismissal is the appropriate sanction, the FSP shall recommend the dismissal to the President, who shall accept and impose or reject the recommendation of dismissal from the FSP, or the President may impose a sanction he or she deems appropriate. If the Respondent accepts responsibility for all of the alleged policy violations and the FSP has determined appropriate sanction(s) or responsive actions, which are promptly implemented, the process is over. The Complainant will be informed of this outcome.

If the Respondent is a staff member or administrator, the Title IX Coordinator will refer the matter to the Chief Human Resource Officer or their designee. Chief Human Resource Officer or their designee will be responsible for reviewing the Title IX Coordinator’s report and initiating removal or otherwise discipline of the staff member or administrator. If the Respondent accepts responsibility for all of the alleged policy violations and the Associate Director of Human Resources Compliance & Training, or their designee, has determined appropriate sanction(s) or responsive actions, which are promptly implemented, the process is over. The Complainant will be informed.

If the Respondent accepts responsibility for some of the alleged policy violations and the appropriate body relative to those named above has determined appropriate sanction(s) or responsive actions, which are promptly implemented, for those violations, then the remaining allegations will continue to be investigated and resolved in accordance with these procedures. 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 Adjudicator 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 Submissions

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 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 the Adjudicator. 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 X, below.

X. Requested Review of the Title IX Coordinator's Decision Regarding Emergency Removal

The Responding Party may petition the Vice President for Finance and Administration ("VPFA"), for administrators and staff, or Vice President for Academic Affairs ("VPAA"), for faculty, 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 VPFA or VPAA. 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 VPFA or VPAA is considering modifying or lifting the emergency removal, the VPFA or VPAA will invite the non-petitioning party and the Title IX Coordinator to submit responses. The VPFA or VPAA will establish a reasonable timeline for handling the matter, including deadlines for submissions.

If the VPFA or VPAA determines that the Title IX Coordinator's decision should be set aside, the VPFA or VPAA 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 VPFA or VPAA may, but is not required to, provide

the Title IX Coordinator with guidance regarding appropriate alternate emergency restrictions or supportive measures.

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

XI. Administrative Leave

The College retains the authority to place a non-student employee respondent on administrative leave during the Title IX Grievance Process, consistent with the Employee or Faculty Handbook.

XII. 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 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.

The Title IX Coordinator may determine that the Formal Complaint must be dismissed on the mandatory grounds identified in section 15 of 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.

1. Contents of Notice

The Notice of Allegations will include the following:

- Notice of the College's Title IX Policy and these 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 Policy Prohibiting Discrimination, Harassment and Retaliation in Employment prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

2. 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.

XIII. Dismissal of A Formal Complaint

1. 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.

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 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 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.

XIV. 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;
- Where a cross complaint has been filed by a respondent against a complainant.

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 Adjudicator 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 other College policy or

procedures, this Grievance Process will be applied in the investigation and adjudication of all of the allegations.

XV. 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 unilateral interest in the process.

Alternate Resolution will not involve mediation, or any face-to-face meetings, between the complainant and the responding party.

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 responding party 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 a decision maker 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 responding 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 informal resolution process and the formal complaint will be investigation 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 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 during the hearing or appeal process the fact that the parties had participated in the Alternate Resolution process or any information learned during the process.

XVI. 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 work 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.

1. 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 Adjudicator, upon the Chair's discretion, may permit the party to participate. If the Adjudicator permits the party to participate in the hearing, the Adjudicator 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 Adjudicator 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 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.³

³ 85 Fed. Reg. 30026, 30361 (May 19, 2020).

If a party does not submit to cross-examination, the Adjudicator 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.⁴

The Adjudicator 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

XVII. 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 responding party, and any third-party witnesses, will be treated with sensitivity and respect.

The investigation will generally include individual interviews of the Complainant, the Respondent, and relevant witnesses. Upon completion of the investigation, the investigator will prepare a final investigative record and an investigative report. The investigative record is a compilation of 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:

⁴ 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>

⁵ See 34 C.F.R. §106.45(b)(6)(i).

- 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; and
- review a draft investigative record and comment on it, in writing, before the investigator finalizes the record and prepares an investigative report.
- review the investigative report, and provide comment on it, prior to the hearing.

At the hearing, the Adjudicator will rely upon the final investigative record as well as any additional statements and information provided to the Adjudicator 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 the Title IX Policy 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 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 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.

3. 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 to interview and questions and topics they would like the investigator 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 will determine which witnesses to interview.

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

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

Parties and witnesses will 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 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 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 to seek to obtain.

The investigator has the discretion to determine whether the requested evidentiary materials are directly related to the allegations in the formal complaint, and, accordingly the investigator 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.

5. 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 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 Adjudicator.

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 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 to consider prior to when the parties' time to inspect and review evidence begins.⁶

The institution will send the evidence made available for each party and each party's advisor, if any, to inspect and review [through an electronic format or a 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 Title IX Coordinator will provide copies of the parties' written responses to the investigator(s) to all parties and their Advisors, if any.⁷

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

⁶ See, 85 Fed. Reg. 30026, 30307 (May 19, 2020).

⁷ See, 85 Fed. Reg. 30026, 30307 (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) business 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.

7. Inclusion of Evidence Not Directly Related to the Allegations

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

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 – 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 otherwise relevant documents or evidence.

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 Advisors in electronic or hard copy. The parties will have ten (10) 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.

XVIII. 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 single Adjudicator. The decision about whether there has been a violation of the Title IX Policy will be made by an Adjudicator who is appointed by the Title IX Coordinator from a pool of trained adjudicators. The Adjudicator may be an individual internal (an employee of the College) or external (outside person named by the College). Adjudicators receive specific training regarding subjects including the dynamics of sexual and gender-based misconduct, the factors relevant to a determination of credibility, the appropriate manner in which to receive and evaluate sensitive information, the manner of deliberation, and the application of the preponderance of the evidence standard, as well as the College's policies and procedures. The Adjudicator will be responsible for making determinations of relevance or allowance of evidence. The adjudicator will not also have served as the Title IX Coordinator, Title IX investigator, or Advisor to any party in the case, and may not serve on the appeals body in the case. The Adjudicator will not have a conflict of interest or bias in favor of or against complainants and respondents generally, or in favor or against the parties to the particular case. The Adjudicator is responsible for facilitating the hearing, including live cross-examination, in accordance with College policies and all applicable state and

federal laws. The Adjudicator will author a finding of responsible or not responsible relative to the alleged conduct.

- Where the Respondent is a staff member or administrator, the findings of the Adjudicator will be provided to the Chief Human Resources Officer, or their designee. The Chief Human Resources Officer, or their designee or their designee will be responsible for reviewing the Adjudicator's findings and initiating removal or otherwise discipline of the staff member or administrator.
- Where the Respondent is a faculty member the findings of the Adjudicator will be provided to the FSP. The FSP will be responsible for reviewing the Adjudicator's findings and considering whether to dismiss or otherwise discipline the faculty member for cause.

A conflict check will be performed by the Title IX Coordinator at the time the Adjudicator is appointed. The Adjudicator will become known to the parties, and each will have the opportunity to request recusal of the Adjudicator if a conflict exists that was unknown to the Title IX Coordinator in advance. Any such requests for recusal should be directed to the Title IX Coordinator in writing.

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 video and audio conferencing platform. 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. Live hearings are not public.

All proceedings will be recorded and a transcript of the proceedings will be made. The recording and/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.

Questioning of the parties and witnesses will be conducted by the Adjudicator. 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.

2. Presumption of Non-Responsibility and Standard of Proof

The Respondent will be presumed “not responsible” unless and until an Adjudicator determines the Respondent is responsible.

The Adjudicator will determine whether the Respondent is responsible using a preponderance of the evidence standard. This means that to find the Respondent responsible for any prohibited conduct, the Adjudicator 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 Adjudicator does not find a violation of the Title IX Policy, the Policy Prohibiting Discrimination, Harassment and Retaliation in Employment or any other College policy, they will dismiss the case.

3. The Adjudicator

The Adjudicator will receive annual training as required by law, on topics 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.

4. Notice of Hearing

At the completion of an investigation, if a case is referred to an Adjudicator 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; and, if determined, the name of the Adjudicator.

If the notice does not include the name of the Adjudicator, 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.

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. 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 Adjudicator 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 Adjudicator's decision, a party seeks to present a witness or introduce evidence not requested prior to the hearing and not disclosed to the investigator, the Adjudicator 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 an Adjudicator permits a party to introduce a newly discovered witness or evidence the Adjudicator will reschedule or adjourn the hearing for the investigator to investigate the newly discovered witness or evidence.

The Adjudicator 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) 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 themselves⁸, 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) 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) 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 Adjudicator. 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 2500 words.

This statement is the parties' opportunity to tell the Adjudicator 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 Adjudicator'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 Adjudicator will not consider new information. Nor may the parties address issues that pertain to sanctions and remedies. The Adjudicator does not consider these issues when determining responsibility. The parties may appropriately raise such issues in their Impact/Mitigation Statements.

⁸ 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.

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 Adjudicator. If a party wants the Adjudicator to hear directly from a witness, the party must submit a written request within the ten (10) business 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, if the party requests that the investigator testify.
2. For each proposed witness an explanation of why the individual's presence is relevant and helpful to the Adjudicator 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 Adjudicator 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 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 Adjudicator understand why the parties would like to hear from specific individuals. It will also allow the Adjudicator 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 to the Title IX Coordinator up until the start of a hearing. The statements will be distributed to the Adjudicator only if the Adjudicator 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 Adjudicator'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 Advisor, witnesses (when testifying), the Adjudicator, the Title IX Coordinator, investigator, 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.⁹

The Adjudicator, 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 Adjudicator. The Adjudicator 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 Adjudicator 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.

C. Questioning by the Adjudicator

The Adjudicator will question the parties and the witnesses first. When the Adjudicator has concluded questioning a particular party or witness, each parties’ advisor will then be provided an opportunity to cross examine the other party or witness.

D. Cross Examination by the Advisor

⁹ 85 Fed. Reg. 30026, 30361 (May 19, 2020).

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.¹⁰

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.¹¹

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

During the Parties' cross-examination, the Adjudicator will have the authority to pause cross-examination at any time for the purposes of asking the Adjudicator'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 Adjudicator 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 Adjudicator having the opportunity to ask a final round of questions.

F. Effect of Not Submitting to Cross Examination

If a party does not submit to cross-examination, the Adjudicator cannot rely on any prior statements made by that party in reaching a determination regarding responsibility, but may

¹⁰ 85 Fed. Reg. 30026, 30340 (May 19, 2020).

¹¹ See, 85 Fed. Reg. 30026, 30339-40 (May 19, 2020).

reach a determination regarding responsibility based on evidence that does not constitute a “statement” by that party.

The Adjudicator 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.

If a witness does not submit to cross-examination, as described below, the Adjudicator cannot rely on any statements made by that witness in reaching a determination regarding responsibility, including any statement relayed by the absent witness to a witness or party who testifies at the live hearing.

G. 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 Adjudicator. A Party’s waiver of cross-examination does not eliminate the ability of the Adjudicator to use statements made by the party or witness.

H. 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 Adjudicator will not consider new information. Nor may the parties address issues that pertain to sanctions and remedies. The Adjudicator does not consider these issues when determining responsibility. The parties may appropriately raise such issues in their Impact/Mitigation Statements.

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

The Adjudicator 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 Adjudicator 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 and the Adjudicator for their review.

XIX. Determination on Findings of Responsibility

After closing arguments, the Adjudicator may begin their deliberations. Deliberations will be in private and they will not be audio-recorded.

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 Adjudicator. 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 Adjudicator.

The Adjudicator 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 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's testimony is non-linear or incomplete, or if the party or witness is displaying stress or anxiety.

The Adjudicator 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.

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

The Final Rule requires that the College allow parties to call character witnesses to testify. The College does not provide for character witnesses in other proceedings. While the character witnesses will be allowed to testify and be crossed as required by the Final Rule, the Adjudicator 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 (“lie detector”) tests and other procedures that are outside of standard use in academic and non-academic conduct processes. While testimony about suchs processes and tests will be allowed during testimony and subject to cross examination as required by the Final Rule, the Adjudicator will be instructed to afford lower weight to such processes relative to the testimony of fact witnesses.

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 Adjudicator may draw an adverse inference as to that party or witness’s credibility.

2. Deliberations on Sanction after a Finding or Responsibility

In the case of staff and administrators, an Adjudicator that finds the Respondent responsible will provide their report to the Chief Human Resources Officer, or their designee, for sanctions.

In the case of faculty members, the FSP shall convene and begin deliberations to consider sanctions and remedies. Remedies should be designed to restore or preserve equal access to the institution’s education program or activity. The FSP will draft a report describing the sanctions and include in its report the rationale for the imposition of such sanctions. The FSP will determine sanctions and remedies by a majority vote. Members of the FSP will be notified in advance of the names of all parties and witnesses involved in the complaint by the Title IX Coordinator. If a member of the FSP must recuse themselves due to conflict of interest, the Title IX Coordinator should be notified in writing prior to deliberations on sanctions. If a member is removed from the FSP due to conflict, the member’s position shall be filled through the appointment of another tenure faculty member who has recently served on the FRB, and when possible is a member of the corresponding division.

Prior to deliberating on sanctions and remedies, the sanctioning bodies will review 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 sanctioning body will also review such disciplinary and/or criminal records.

(Where an employee's disciplinary record is being considered solely for sanctions, it will not be shared with the Complainant.)

In determining sanctions and remedies, the sanctioning body 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 responding party ;
- prior misconduct or disciplinary record of the Respondent and any criminal convictions;
- the goals of the College's Title IX Policy and these procedures; and
- any other mitigating, aggravating, or compelling factors.

When the Respondent is a staff member or administrator, the Adjudicator may recommend one or more of the following sanctions and remedies: discussion, recommendation for counseling or mentoring, monitoring of the situation, support for self-help as well as more serious disciplinary action. These may include (but are not limited to) a verbal or written warning or letter in the personnel file for a period of time or permanently, withholding of salary increases or stipends, removal from the classroom, suspension (with or without pay) or separation from the College.

When the Respondent is a faculty member, the FSP may impose one or more of the following sanctions and remedies: reduction in salary; embargo on the consideration of salary increases for a specified period of time; prohibition of proposing, through the College, some or all sponsored research or other grants for a specified period of time; censure; or dismissal. If the FSP believes that dismissal is the appropriate sanction, the FSP shall recommend the dismissal to the President, who shall accept and impose or reject the recommendation of dismissal from the FSP, or the President may impose a sanction they deem appropriate. The President shall present their decision in writing to both parties setting forth the grounds for said decision. If the Respondent is a faculty member with tenure and the President imposes the sanction of dismissal, the President will seek the approval of the Board of Trustees in accordance with the College's Bylaws and subject to the appeals provision for faculty members set forth below.

The Adjudicator 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 Respondent's sanctioning body.

3. 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").

4. 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.

5. 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.

6. Hearing Record

An audio and/or 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 campus 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, and Adjudicator. Such failure will not constitute grounds for appeal.

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

The Adjudicator is also prohibited from recording any portion of the hearing. Immediately after issuing the Adjudicator's determination, the Adjudicator will destroy any notes they took during the hearing.

The hearing record will include: the audio recording of the hearing, the Adjudicator'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 Adjudicator / Sanction 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; (2) a determination regarding responsibility; and/or (3) sanctions imposed. 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 institution's own procedures);
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made and that could affect the outcome of the matter;
- The Title IX Coordinator, investigator(s), or Adjudicator(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.

The submission of appeal stays any sanctions for the pendency of an appeal. Supportive measures and remote learning opportunities remain available during the pendency of the 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 for staff will be decided by an Appeal Panel consisting of the Vice President for Finance & Administration, or their designee, and another panelist. Appeals for faculty will be decided by an Appeal Panel consisting of the Vice President for Academic Affairs, or their designee, and the Chair and Secretary of the Faculty Executive Committee (“FEC”). The Appeal Panel will not include the Adjudicator, investigators, or Title IX Coordinator.

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 ground 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 Adjudicator 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 Adjudicator if possible for a new hearing or remand a case to a newly composed Adjudicator 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 Adjudicator from which it originated for a new hearing.

Upon remand from the Appeal Panel, as necessary and possible, an Adjudicator may remand a case to the investigator 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.

1. Appeal of the President's Decision of Dismissal of a faculty member

When the Respondent is a faculty member and the sanction of dismissal is imposed by the President, the President will notify both parties, and upon request of the Respondent, shall transmit to the Board of Trustees the transcript of the case and the appeal. Both parties are permitted to present written arguments to the Board of Trustees. The Board of Trustees' review will be based on the transcript of the case and the written argument(s). The decision of the President will either be sustained by the Board of Trustees or the Board of Trustees may make a reasoned determination for a less severe sanction or exonerate the Respondent.

XXI. 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.

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.

For additional information regarding the College's policy against retaliation, see the [Policy Prohibiting Discrimination, Harassment and Retaliation in Employment](#).