

HEARING PROCEDURES FOR THE TITLE IX SEXUAL HARASSMENT AND RELATED CONDUCT POLICY

These Hearing Procedures (“Procedures”) shall govern the hearing process for formal resolution of Formal Complaints of Sexual Harassment, as set forth in the university’s Title IX Sexual Harassment and Related Conduct Policy (“Policy”). The parties to each Formal Complaint of Sexual Harassment subject to the university’s Policy have the right to a hearing at the conclusion of the university’s investigation in cases where the parties do not elect an Alternative Resolution and the Formal Complaint is not dismissed.

I. Pre-Hearing Steps:

- A. **Selection of Hearing Officer:** The hearing will be presided over by a Hearing Officer selected by the university.
1. The Hearing Officer will be impartial and free from actual bias or conflict of interest. The Title IX Coordinator will provide the parties the name of the Hearing Officer no later than five (5) business days in advance of the hearing. Objections to the Hearing Officer must be raised in writing, detailing the rationale for the objection, and must be submitted to the Title IX Coordinator as soon as possible and no later than two business days prior to the hearing. The Title IX Coordinator will give the Hearing Officer a list of the names of all parties, witnesses, and advisors in advance of the hearing. The Hearing Officer will notify the Title IX Coordinator of potential bias or conflict of interest.
 2. The Hearing Officer will receive annual training regarding the university’s policies and procedures; the handling of sexual misconduct cases; how to conduct a hearing; issues of relevance, including when questions and evidence about the Complainant’s sexual predisposition or prior sexual behavior are not relevant; how to serve impartially by, among other things, avoiding prejudgment of the facts at issue, conflicts of interest, and bias; and other relevant issues. The Hearing Officer will also be trained on any technology that might be used during a hearing.
- B. **Notice of Hearing:** The Complainant and Respondent will be notified in writing of the date, time, and location of the hearing; the charges to be reviewed by the Hearing Officer, including the date, time, location and essential factual allegations concerning the violation; and the provisions of the Policy alleged to have been violated. In general, the

Respondent and Complainant will be provided the Notice of Hearing at least ten business days prior to the date of the hearing.

- C. **Witnesses:** The Hearing Officer will identify any witnesses that they wish to hear from at the hearing based on a review of the Final Investigative Report. The Complainant and Respondent may each request the presence of any additional witnesses at the hearing, which will be determined based on relevance by the Hearing Officer. The university cannot compel the attendance of any witness. Typically, only witnesses who were identified and interviewed as part of the investigation may be called at the hearing. Under very limited circumstances, the Complainant, Respondent or Hearing Officer may identify a witness with relevant information who has not previously been interviewed. In such a case, the Hearing Officer will determine whether the new witness's participation at the hearing is relevant and appropriate under the circumstances, and if so, may allow the witness to participate in the hearing or refer the matter to the Investigator for additional investigation.

- D. **Identification of Hearing Advisor.** Parties may have one advisor for all matters leading up to a hearing and a different advisor for the hearing, but no more than one advisor per party may attend the hearing. Irrespective of whether a party plans to change advisors for the hearing or retain the same advisor, all parties must inform the Title IX Coordinator at least two business days before the hearing who the party's advisor at the hearing will be, and whether that person is an attorney. If a party does not have an advisor for the hearing, the Title IX Coordinator will appoint an advisor for the hearing, at no cost to the party, to ask cross-examination questions on behalf of the party.

- E. **Pre-Hearing Procedures.** The Hearing Officer and/or Title IX Office may establish additional pre-hearing procedures relating to issues such as scheduling, hearing procedures, structure, advance determination of the relevance of certain topics, and other procedural matters. The Hearing Officer will communicate with the parties prior to the hearing with respect to these issues and establish reasonable, equitable deadlines for party participation/input.
 - 1. The Hearing Officer may invite the parties to submit the questions or topics the parties wish to ask or discuss at the hearing, so that the Hearing Officer can rule on their relevance ahead of time. This advance review opportunity does not preclude advisors from asking a question for the first time at the hearing or from asking for a reconsideration based on any new information or testimony offered at the hearing.

 - 2. In advance of the hearing, the Hearing Officer will consider any

argument by a party that evidence identified as relevant in the final investigative report is not, in the party's view, relevant. Similarly, evidence identified as directly related but not relevant by the Investigator(s) may be argued to be relevant.

3. The Hearing Officer may rule on these arguments pre-hearing and will share those rulings with the parties prior to the hearing to assist in preparation for the hearing. The Hearing Officer may consult with the Title IX Coordinator in making these determinations prior to the hearing.

- F. **Request to Postpone Hearing:** Permission to postpone a hearing may be granted provided that the request to do so is based on a compelling emergency and, where possible, such request is provided to the Hearing Officer and Title IX Coordinator at least 48 hours prior to the time of the hearing.

II. Hearing.

- A. **Timing:** A hearing will be scheduled for a date at least 10 business days after the final investigative report is provided to the parties; typically a hearing will be held within 15 business days from the date that the final investigative report was provided. This timeframe may be extended for good cause as provided for in the Policy; if granted, the reason for the extension will be shared with the parties in writing.

B. **Hearing Guidelines:**

1. **Decorum.** The Hearing Officer has wide discretion over matters of decorum at the hearing, including the authority to excuse from the hearing process participants who are unwilling to observe rules of decorum. If a party's advisor does not abide by the university's rules of decorum (including, but not limited to, those listed below), the advisor may be subject to removal and the university will appoint a new advisor for a party for the remainder of the hearing.
 - a. The parties and their advisors will remain seated at all times during the hearing, including during cross-examination.
 - b. The following behaviors will not be tolerated during the hearing: yelling, verbal abuse, disruptive behavior, interrupting or talking over one another, name calling, or using profane or vulgar language (except where such language is relevant).

- c. Any participant in the hearing who is not currently involved in questioning should refrain from disrupting the hearing, making gestures, facial expressions, audible comments, or the like, as manifestations of approval or disapproval during any testimony.
 - d. When cross-examining a party or witness, advisors shall not repeat, characterize, express an opinion about, editorialize, or otherwise state any response to the answer given by the party or witness except to ask a follow up question to elicit relevant evidence.
- 2. **Advisors:** While the advisor may be present, the advisor may not speak or otherwise participate in the hearing except for purposes of conducting cross-examination, when directed to do so by the Hearing Officer. Other than cross-examination, the advisor may not address the Hearing Officer and must comport themselves in a manner that is not disruptive to the hearing or meetings.
- 3. **Presence and Participation at Hearing:**
 - a. A Complainant or Respondent is not required to participate in person at the hearing in order for the hearing to proceed.
 - b. A Complainant or Respondent may request alternative testimony options that would not require physical proximity to the other party, including testifying via a remote electronic method. This request should be made no fewer than five business days prior to the hearing.
 - c. If despite being notified of the date, time, and location of the hearing, the Respondent or Complainant is not in attendance, the hearing will proceed. In doing so, the Hearing Officer will consider the available testimony and evidence. In the absence of clear evidence that emergency circumstances beyond the control of the Complainant or Respondent prevented such person from being present, the final determination of the Hearing Officer will stand.
 - d. If a party or witness elects not to participate in the live hearing, or participates in the hearing but refuses to answer questions posed by a party through their advisor, the Hearing Officer will not rely on any statement of the non-participating party or witness in reaching a determination regarding responsibility. If a party or witness participates in the hearing and answers questions

posed by a party through their advisor but refuses to answer questions posed by the Hearing Officer, the Hearing Officer can still rely on that party's or witness's statements when making their determination.

- i. "*Statements*" for purposes of this section means factual assertions made by a party or witness that do not themselves constitute the alleged harassment. Statements might include factual assertions made during an interview or conversation, written by the individual making the assertions (including those found in a Formal Complaint), and memorialized in the writing of another (e.g. in an investigative report, police report, or medical record). Where evidence involves intertwined statements of both parties (e.g. a text message exchange or an email thread) and one party refuses to participate in the hearing or submit to questioning about the evidence while the other does participate and answer questions, the statements of only the participating party may be relied on by the Hearing Officer.
 - e. If a party does not appear for the hearing, their advisor may still appear for the purpose of asking cross-examination questions of the other party and witnesses. If the non-participating party's selected advisor also does not appear for the hearing, the university will appoint an advisor to participate in the hearing for the purpose of asking cross-examination questions of the other party on behalf of the non-participating party.
4. **Hearing Format:** The Hearing Officer has wide discretion to designate the hearing format. Subject to the discretion of the Hearing Officer, hearings will ordinarily begin with introductory remarks by the Hearing Officer, followed by the Hearing Officer asking relevant initial questions of the parties as deemed appropriate by the Hearing Officer. During this portion of the hearing, an advisor may confer privately and in a non-disruptive manner with their advisee, but they are not allowed to make opening statements or otherwise address the Hearing Officer or anyone else present at the hearing. After the Hearing Officer has asked their initial questions of the parties, the Hearing Officer will permit each party's advisor to ask the other party relevant questions and follow-up questions. The Hearing Officer may ask follow-up questions as necessary. Subject to the discretion of the Hearing Officer, questioning of witnesses will generally follow a similar process. Such cross-examination of

the parties and witnesses by advisors will be conducted directly, orally, and in real time by the party's advisor of choice and never by the party personally.

5. **Questioning at the Hearing.** The parties' advisors, and not the parties themselves, will be permitted to ask the other party and any witnesses relevant questions and follow-up questions. The questioning will be conducted directly, orally, and in real time by the advisor. If a party does not have an advisor present at the hearing, the university will provide, without fee or charge, an advisor of the university's choice to conduct the cross-examination questioning on behalf of that party.
6. **Relevance.** Only relevant cross-examination and other questions may be asked of a party or witness. Before a Complainant, Respondent, or witness answers a cross-examination or other question, the Hearing Officer will first determine whether the question is relevant and explain any decision to exclude a question as not relevant. Advisors are not permitted to object to the Hearing Officer's decisions regarding relevance during a hearing. In general, the Hearing Officer will not consider statements of personal opinion or statements as to any party's general reputation for any character trait as relevant.
7. **Prior Sexual History or Disposition.** Questions about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions are intended to elicit evidence that someone other than the Respondent committed the conduct alleged by the Complainant or concern specific instances of prior sexual behavior with the Respondent and may be relevant to establish consent.

- C. **Hearing Record:** The hearing is closed to the public. The Complainant and the Respondent are each allowed to have one advisor of their choice present throughout the hearing process. The university shall keep a transcript or audio recording of the hearing. Any other recording is prohibited. No camera, TV, or other equipment, including cellphones, will be permitted in the hearing room except as arranged by the university. The parties may inspect and review the transcript or audio recording after it is completed.

III. Post-Hearing Process.

- A. **Determination Regarding Responsibility.** After the hearing, the Hearing Officer will make a finding by the preponderance of the evidence as to whether the Respondent(s) violated the Policy and create the written notice of outcome as outlined below.

- B. **Disciplinary Authority.** If the Hearing Officer determines that the Respondent is responsible for violating the Policy, the Hearing Officer will refer the matter to the appropriate Disciplinary Authority who will determine the appropriate remedies and/or sanction(s) to be imposed.
1. The Disciplinary Authority is typically the university administrator with appointing or other authority over the Respondent as follows:
 - a. For student Respondents, the Disciplinary Authority is the Vice President for Student Affairs and Dean of Students or designee.
 - b. For staff Respondents, the Disciplinary Authority is the Vice President for Human Resources or designee, who may consult with the Respondent's direct supervisor.
 - c. For a Respondent who is both a student and employee, the Disciplinary Authority is the Dean of Students or designee if the Respondent's primary status is an enrolled student. The Disciplinary Authority is the Vice President for Human Resources or designee when the Respondent's primary status is an employee who is enrolled as a student as a benefit of their own employment. Where there is a question about the predominant role of the Respondent, the Title IX Coordinator may direct that the Dean of Students and the Vice President for Human Resources work collaboratively as the Disciplinary Authority. Such a Respondent may be subject to any of the sanctions applicable to students and employees.
 - d. For faculty Respondents, the Disciplinary Authority is the Provost and Executive Vice President for Academic Affairs or designee, who may consult with the Dean or Department Chair.
 2. In determining the appropriate sanction(s) and/or remedies, the Disciplinary Authority may consider a number of factors, including:
 - a. the nature of the conduct at issue;
 - b. the impact of the conduct on the Complainant;
 - c. the impact on, or implications of the conduct for, the university community;

- d. prior misconduct by the Respondent, including the Respondent's relevant prior discipline history, both at the university or elsewhere, and any criminal convictions, if such information is available and known;
 - e. any expression of remorse or acceptance of responsibility by a Respondent;
 - f. maintenance of a safe and respectful environment conducive to learning;
 - g. protection of the university community;
 - h. the necessity of any specific action in order to eliminate the Sexual Harassment, prevent its recurrence and remedy its effects on the Complainant or other university community members; and,
 - i. any mitigating, aggravating, or compelling circumstances in order to reach a just and appropriate resolution in each case.
3. The Disciplinary Authority may also consider restorative outcomes that, taking into account the safety of the university community as a whole, allow a Respondent to develop insight about their responsibility for the behavior, learn about the impact of the behavior on the Complainant and the community, and identify how to prevent or change the behavior. A combination of sanctions may be issued.
 4. The Disciplinary Authority will provide the Hearing Officer with a description of any disciplinary sanctions the university imposes on the Respondent, and whether remedies designed to restore or preserve equal access to the university's education Programs or Activities will be provided by the university to the Complainant, as applicable.

C. **Written Notice of Outcome.** After the hearing, the Hearing Officer will create a written notice of outcome that will include the following:

1. Identification of the allegations potentially constituting 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 the application of this Policy to the facts;
 5. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility;
 6. Description of any sanctions imposed on the Respondent and whether remedies designed to restore or preserve equal access to the university's education Programs or Activities will be provided to the Complainant; and
 7. Information about the appeal process.
- D. Regardless of their participation in the Formal Resolution process, the Title IX Coordinator will provide the Complainant and Respondent the written notice of outcome issued by the Hearing Officer simultaneously.
- E. Remedial measures and sanctions will not be imposed until any appeal process in the Policy is final.