

Tap No. 61 Appendix A – Formal Grievance Process

- I. Formal Grievance Process Overview and Principles
 - a. A Formal Complaint initiates the Formal Grievance Process. The Formal Grievance Process provides for the investigation and adjudication of Title IX Sexual Harassment. This Appendix A sets forth the Formal Grievance Process the University will follow in response to receipt of a Formal Complaint of alleged Title IX Sexual Harassment.
 - b. During the Formal Grievance Process, the parties have an equal opportunity to present relevant evidence.
 - c. The parties' ability to discuss the allegations under investigation or to gather and present relevant evidence related to the alleged Title IX Sexual Harassment is not restricted under this Policy. Party discussions of allegations and the gathering and presentation of relevant evidence, however, does not permit parties to engage in witness tampering, nor does it allow for retaliation under the policy. Additionally, except as otherwise permitted under Title IX or other applicable law, parties and Advisors are not permitted to disclose or disseminate the evidence they review and inspect, or the Investigative Report, outside the Formal Grievance Process.
 - d. A Complainant may have the option to pursue legal action through civil litigation or by pressing criminal charges. The pendency of a civil or criminal matter does not relieve the University of its obligation to respond to alleged Title IX Sexual Harassment. Concurrent law enforcement activity may result in a temporary delay of the Formal Grievance Process, and, if so, the parties will be notified of the delay.
 - e. Under the Formal Grievance Process, the University's email account of a party or University-affiliated witness or Advisor is the official method of communication. Parties and University-affiliated witnesses and Advisors should regularly check their account for time critical notices or administrative notices requiring a timely response.
- II. University's Response to a Formal Complaint
 - a. When the University receives a Formal Complaint of alleged Title IX Sexual Harassment, the University will provide the following written notice and information to both the Complainant and the Respondent, if their identities are known:
 - i. Notice of the University's Formal Grievance Process.
 - ii. Notice of the allegations of Title IX Sexual Harassment, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved, if known; the conduct allegedly constituting Title IX Sexual Harassment; and the date and location of the alleged Title IX Sexual Harassment, if known. To the extent the University investigates additional allegations of Title IX Sexual Harassment not included in the initial notice to the

parties, the University will provide written notice of the additional allegations to the parties whose identities are known.

- iii. Information about the Informal Resolution process.
- iv. Information about Policy Presumptions (Policy Section VII).
- v. Notice that parties may have an Advisor of their choice who may be an attorney.
- vi. Notice that parties may inspect and review evidence as set forth in Section III of this Appendix.
- vii. Notice that parties are prohibited from knowingly making materially false statements in bad faith and that such action is prohibited by the Student Code of Conduct and TAP No. 55: Ethical, Respectful, and Professional Conduct.

III. Investigations

a. General Information:

- i. A Formal Complaint, that has not been dismissed, will be investigated by the Title IX Coordinator and one or more Deputy Title IX Coordinator (for the purposes of Appendix A: an “Investigator” or collectively, the “Investigators”). The Investigators are responsible for gathering evidence sufficient to reach a determination regarding responsibility; the burden is not on the parties.
- ii. During the Investigation:
 - 1. The Investigators will request to meet with the Complainant, the Respondent, and witnesses discovered during the investigation or suggested by the parties.
 - 2. The Investigators may request follow up meetings with the parties and/or any witnesses.
 - 3. Both parties have equal opportunity to present witnesses and evidence as part of the process.
 - 4. The parties, and the Investigators, do not have the right to depose other parties or witnesses or to compel parties or witnesses to participate in the Formal Grievance Process.
 - 5. The Investigators will take meeting notes, and will gather evidence directly related to the allegations raised in the Formal Complaint from the Complainant, Respondent, and any witnesses, including, but not limited to, texts, phone call logs, taxi/Uber/Lyft receipts, and social media posts.

6. Any party whose participation is invited or expected as part of the investigation shall be provided with written notice of the date, time, location, participants, and purpose of all meetings or investigative interviews, with sufficient time given to prepare to participate.
7. The Investigators will create an Investigative Report at the conclusion of the Investigation.

b. Evidence Subject to Inspection and Review and Written Response:

- i. Prior to the conclusion of the Investigation and the completion of the Investigative Report, both parties have an equal opportunity to inspect, review and respond to all evidence obtained as part of the Investigation that is directly related to the allegation(s) raised in the Formal Complaint prior to the completion of the Investigative Report. Each party and his/her Advisor, if any, will be sent such evidence, and the parties have 10 business days to submit a written response which the Investigator(s) will consider prior to completion of the Investigative Report.
 1. Evidence subject to inspection and review includes evidence whether obtained from a party or from another source. At the inspection and review stage of the Formal Grievance Process, the Investigator(s) will not screen out irrelevant evidence. Determinations regarding relevance will be made when finalizing the Investigative Report.
 2. The University is not obligated to share a copy of any evidence that was illegally or unlawfully obtained or evidence that is protected by a legally recognized privilege.
- ii. In their written response, parties may include corrections or appropriate context, point out any evidence that appears to be missing, and/or submit additional evidence. Any such additional evidence that is summarized in the Investigative Report will not qualify for the purposes of an Appeal as new evidence that was reasonably available at the time the determination regarding responsibility is made.
- iii. Each party's written response will be shared with the other party.
- iv. Parties may use their written response to help them prepare for the Hearing.
- v. All evidence subject to the parties' inspection and review will be available at the Hearing. Participants may refer to such evidence during the Hearing.

c. Investigative Report:

- i. The Investigator(s) will consider the parties' responses following the inspection and review period, determine what evidence is relevant, close the investigation

and fairly (by objective evaluation free of bias) summarize the relevant evidence in an Investigative Report.

- ii. Where a Formal Grievance Process involves multiple Complainants, multiple Respondents, or both, the Investigator(s) may issue a single Investigative Report.
- iii. The Investigative Report will be sent to each party and the party's Advisor, if any, no fewer than 15 business days prior to the Hearing.
- iv. Parties shall submit to the Investigator(s) any written response that they have to the Investigative Report no fewer than 10 business days prior to the Hearing.
 1. If a party disagrees with an investigator's determination regarding relevance, the party may, in addition to making the argument in his/her response to the Investigative Report, argue his/her disagreement to the Decision-Maker at the Hearing.
- v. Parties are expected to submit any evidence they would like the Investigators to consider prior to finalization of the Investigative Report. However, a party may provide additional evidence as part of his/her response to the Investigative Report. To the extent a party provides additional evidence in response to the Investigative Report, such evidence will not qualify for the purpose of an Appeal as new evidence that was reasonably available at the time the determination regarding responsibility was made.
- vi. Each party's written response, including additional new evidence as applicable, will be shared with the other party.
- vii. A party has the opportunity to respond to any new evidence submitted by the other party no fewer than 5 business days prior to the hearing.
- viii. The Investigator(s) will summarize any relevant new evidence as an addendum to the Investigative Report, and parties and their Advisors will receive copies of this Addendum no fewer than 3 business days prior to the Hearing.

IV. Hearing

- a. Once the Investigative Report is finalized, a Hearing will be scheduled.
 - i. At the request of either party and/or in the University's discretion, the University will provide for the Hearing to occur with the parties located in separate rooms with technology enabling the Decision-Maker and each party to see and hear the other party or the witness who is speaking and/or answering questions.

- b. Not later than 3 business days prior to the Hearing, each party must identify to the Title IX Coordinator who will appear on his/her behalf as a witness, and who will be serving as his/her Advisor.
- c. Hearings will be administered by a Decision-Maker who is a different person than the Title IX Coordinator/Investigator(s).
 - i. Prior to the Hearing, the Decision-Maker will receive the Investigative Report.
 - ii. At the Hearing, the Decision-Maker has the right to ask relevant questions and elicit relevant testimony from parties and witnesses.
 - iii. Following the hearing, the Decision-Maker will objectively evaluate all relevant evidence, and will independently reach a determination regarding responsibility.
- d. The concept of relevance will guide the Decision-Maker in determining what evidence to consider and the Decision-Maker has discretion regarding the weight or credibility to assign to any particular piece relevant evidence.
 - i. Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.
 - ii. The Decision-Maker may deem a question irrelevant because the question asks about a detail that is not probative of any material fact concerning the allegations. Additionally, where evidence or questions are duplicative, the Decision-Maker may deem the evidence or question to be irrelevant.
 - iii. The Decision-Maker will not consider or permit evidence regarding treatment records and other information covered by a legally recognized privilege. See Section III.a.ii.7 for further information and exceptions.
 - iv. In the event that relevant evidence was destroyed by a party, at the Hearing, the Decision-Maker can take that into account when assessing the credibility of parties, and the weight of evidence in the matter
- e. During the hearing, the Decision-Maker will permit each party's Advisor to ask the other party and any witnesses, but not their own party, all relevant questions and follow-up questions. An Advisor may not otherwise speak for or on behalf of a party, including, but not limited to, by presenting opening or closing statements and/or by objecting to questions asked by the other party's Advisor, and Advisors and all parties will be expected to follow all Hearing rules established by the University.

- f. The following rules and procedures apply to questions asked by a party's Advisor:
- i. A party's Advisor may question the other party or witnesses directly, orally, and in real time, but only relevant questions may be asked. Before a party or witness answers a question, the Decision-Maker must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. Although a party has the option to appeal on the ground of procedural irregularity following a hearing, neither a party nor his/her Advisor has the right to challenge the Decision-Maker's determination of relevance during the hearing.
 - ii. A party may not personally question the other party or any witness. If, not later than 3 business days prior to the Hearing, a party has indicated that he or she will not have an Advisor present for the Hearing, the University will provide an Advisor chosen by the University, without fee or charge, for the purposes of asking the other party and witnesses questions during the hearing.
 - iii. In making a determination of responsibility, the Decision-Maker will not consider any statement made by a party or witness who has not answered questions during the Hearing. The Decision-Maker, however, will not draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the Hearing or refusal to answer questions. Where the Title IX Coordinator has signed the Formal Complaint, the Complainant is not required to participate in the Formal Grievance Process. If a Complainant doesn't participate in the Formal Grievance Process, the Decision-Maker cannot rely on a Complainant's statements because the Complainant has not answered questions at the Hearing.

1. Exceptions/Clarifications:

- a. Police reports, SANE reports, medical reports, and other documents and records will not be relied on to the extent that they contain the statements of a party or witness who has not answered questions during a Hearing.
- b. A Decision-Maker may consider documentary evidence that contains intertwined statements if one person who has made the statements in the document answers questions about it at the Hearing.
- c. Where a Complainant does not answer questions at a hearing, but video evidence exists showing the underlying incident, a Decision-Maker may consider the video evidence.
- d. Even if a party or witness refuses to respond to a Decision-Maker's questions, the Decision-Maker may still rely on that party or witness's statements and can make no inference from

the party or witness's refusal to answer the Decision-Maker's questions.

- g. The University will create an audio recording of the Hearing. Parties have the right to inspect and review the recording.

V. Determination of Policy Violation

- a. Within a reasonably prompt timeframe following the Hearing, the Decision-Maker will issue a written determination regarding the Respondent's responsibility for the alleged Title IX Sexual Harassment Policy violation applying the preponderance of the evidence standard.
- b. The written determination will include:
 - i. Identification of the allegations potentially constituting Title IX Sexual Harassment;
 - ii. 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;
 - iii. Findings of fact supporting the determination;
 - iv. Conclusions regarding the application of this Policy to the facts;
 - v. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions to be imposed on the respondent, and whether remedies designed to restore or preserve equal access to the University's Education Program or Activity will be provided to the complainant; and
 - vi. The procedures and permissible bases for the Complainant and Respondent to appeal.
- c. The written determination will be provided to both parties simultaneously. The determination regarding responsibility becomes final either on the date that the parties are provided with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

VI. Remedies and Sanctions

- a. Where the determination shows Respondent to be responsible for violating this policy, the Complainant will be provided with remedies as noted in the Decision-Maker's determination of responsibility. Remedies will be designed to restore or preserve equal

access to the University's Education Programming and Activities. Such remedies may include the same individualized services described as Supportive Measures; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent. The Title IX Coordinator is responsible for effective implementation of any remedies. Thus, where a written determination states that remedies will be provided, the Complainant should contact the Title IX Coordinator to discuss the nature and implementation of such remedies.

- b. Similarly, after a determination of responsibility for a policy violation has been made, the Respondent will be subject to the sanctions set forth in the Decision-Maker's determination of responsibility. Sanctions will be assigned which are adequate to protect the safety of the campus community, which are reflective of the seriousness of the Title IX Sexual Harassment and/or other prohibitions contained within this Policy, and which consider the surrounding circumstances of the Title IX Sexual Harassment. Previous conduct violations by a Respondent may be considered when assigning sanctions.
 - i. Range of Potential Sanctions against Students: Students are subject to the non-exhaustive list of disciplinary sanctions in the Code of Student Rights, Responsibilities, and Conduct for violations of the Code. These may include one or more of the following measures: written reprimand, loss of privileges, disciplinary probation, educational research/projects, restitution, fines, intervention, no contact orders, fees, suspension, and/or expulsion. As set forth in the Code of Student Rights, Responsibilities, and Conduct, the University reserves the right to impose other sanctions in response to the specific circumstances of a violation of this Policy.
 - ii. Range of Potential Sanctions against Employees: Disciplinary sanctions for employee violations of this Policy may range from a disciplinary warning to termination from the University. Disciplinary sanctions may include one or more of the following measures: termination from the University, unpaid suspension, change in working facility, mandated enrollment in an Employee Assistance Program, written reprimand in personnel file, and/or withholding of salary increase. The University reserves the right to impose other sanctions in addition to those listed above in response to the specific circumstances of a violation of this Policy.

VII. Appeals

- a. Within 5 business days of receipt of a determination, both parties have an equal right to submit an appeal to the Title IX Coordinator on the following three bases:
 - i. Procedural irregularity that affected the outcome of the matter;
 - ii. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome; and

- iii. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.
- b. When an appeal is filed, the Title IX Coordinator will notify the other party of the appeal. Both parties will be given an equal opportunity to submit a written statement in support of, or challenging, the outcome. Parties will be provided with information regarding the timelines for submission of such statements.
- c. Appeals will be administered by an Appeal Decision-Maker who is not the same person as the Decision-Maker that reached the determination regarding responsibility or dismissal, the Investigator(s), or the Title IX Coordinator.
- d. Appeals will proceed on the record only; parties and witnesses will not be interviewed by the Appeal Decision-Maker. The record will include the written determination, the Investigative Report, the recording of the underlying hearing, new evidence as applicable, and any written statement submitted by the parties in connection with the Appeal. Following review of the record, the Appeal Decision-Maker will issue a written decision describing the result of the appeal and the rationale for the result. The Appeal Decision-Maker may either deny the appeal, or, if the appeal is granted, determine the appropriate remedy, which may include revising the finding and sanctions, if any, or remanding the matter back to the Title IX Coordinator with directions for resolving the Appeal. The Appeal decision will be provided simultaneously to both parties.