

## **Appendix A.1: Faculty & Staff Title IX Sexual Harassment Investigation & Adjudication Procedures**

### **Introduction**

The following procedures apply to all complaints of sexual harassment as defined under federal Title IX regulations that involve faculty or staff respondents. Policies for complaints that involve only students can be found here <https://titleix.williams.edu/policies/>.

The College also prohibits and has established procedures to address claims of sexual discrimination that does not meet the definition of harassment under Title IX. Those policies and procedures can be found in the Faculty Handbook in Section VII, Appendix A.

If a complaint alleges conduct that constitutes sexual harassment under Title IX, the following practices and procedures shall apply:

1. After the college receives a report of Title IX sexual harassment, the Title IX Coordinator or the applicable Deputy Title IX Coordinator (referred to collectively here as “a Title IX coordinator”) will promptly contact the person who was reported as having experienced the sexual harassment to discuss the availability of supportive measures and to explain the process for filing a formal complaint.
2. Supportive measures, which are available regardless of whether a formal complaint is filed, are non-disciplinary, non-punitive individualized services offered to either party, as appropriate and reasonably available, before or after the filing of a formal complaint or where no formal complaint has been filed. Supportive measures are designed to restore or preserve equal access to the college’s education program or activity without unreasonably burdening the other party. They include measures designed to protect the safety of all parties or the college’s educational environment, or deter sexual harassment. Supportive measures may include counseling, modifications of work schedules, mutual restrictions on contact between the parties, changes in work locations, leaves of absence (which may be paid or unpaid), increased security and monitoring of certain areas of the campus, and other similar measures. Williams will maintain as confidential any supportive measures provided to the complainant or respondent (including from the other party), to the extent that maintaining such confidentiality would not impair the ability of the college to provide the supportive measures. Both complainants and respondents are encouraged to speak with a Title IX coordinator about the availability of supportive measures at any point in the resolution process.
3. To initiate the process, the complainant must sign (digitally or physically) and submit a written document, called the “complaint,” in paper or electronic format, to a Title IX coordinator. The complaint must contain sufficient information regarding the allegations of sexual harassment to permit the respondent to understand the allegations and be able to adequately respond, and for the College to initiate an investigation, including:
  - a. the name of the respondent, if known;
  - b. the date or approximate date of the alleged misconduct; and
  - c. a description of it, including the location.

4. If the investigation reveals other related allegations of instances of sexual misconduct or harassment not otherwise detailed in the complaint, the complainant will have the opportunity to amend the complaint to include allegations of these additional related instances.
5. The college may consolidate multiple complaints in situations that arise out of the same facts or circumstances and involve more than one complainant, more than one respondent, or what amount to counter-complaints by one party against the other. If there are multiple complainants and one respondent, the college may consolidate the complaints where the allegations of sexual harassment arise out of the same facts or circumstances. The requirement for the same facts and circumstances means that the multiple complainants' allegations are so intertwined that their allegations directly relate to all the parties.
6. In select circumstances, a Title IX coordinator may sign a formal complaint and initiate an investigation and adjudication process without the participation of the person alleged to have experienced the sexual harassment. In deciding that circumstances require an investigation, the Title IX coordinator may consider a variety of factors, including whether there is a pattern of alleged harassment by a particular respondent, or whether the allegations involved significant physical injuries, assault or battery, threats of violence, use of weapons, or similar factors. If a Title IX coordinator decides to sign a formal complaint themselves, the person alleged to have experienced sexual misconduct is invited but not required to participate in the investigation and adjudication process.
7. Other than a Title IX coordinator, no other third parties can file formal complaints, but they can report sexual harassment as described above.
8. Administrative leave / Other disciplinary action. Nothing in this policy limits the college's ability to put a party on paid or unpaid administrative leave pending the completion of this process, or take any other action, provided the college complies with the policies and procedures set forth in Section II-W of the *Faculty Handbook* for faculty or the Workplace Conduct Policies in the *Staff Handbook* for staff.
9. Informal Resolution. The College will not use an informal resolution process to resolve allegations that an employee, whether faculty or staff, sexually harassed a student. In all other cases under this process, informal resolution is an option under the following circumstances:
  - a. It must be completely voluntary, and the written consent of both parties will be required;
  - b. a formal complaint must have been filed; and
  - c. the Title IX coordinator must agree that the complaint is suitable for informal resolution.

If the complaint proceeds to informal resolution, a Title IX Coordinator will provide the parties with written notice disclosing the allegations and the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations. At any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint, and any consequences resulting from participating in the informal resolution process, including

the records that will be maintained or could be shared. Informal resolution occurring before the start of an investigation will take the form of the informal process described in Section VII, Appendix A, III.A.

10. Before the investigation is initiated, a Title IX coordinator will provide the parties a notice of alleged violations for their review. The notice of alleged violations will list the policy violation(s) alleged by the complainant that will be investigated and will include the following:
  - a. A copy of these procedures.
  - b. The allegations of sexual harassment as defined in the Title IX regulations, with sufficient details to the extent known at the time and with sufficient time to prepare a response before any initial interview. It is important to note that complete details might not emerge until the investigation process is underway.
  - c. An explanation of the burden of proof and the presumption that respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
  - d. A request that the parties preserve any potentially relevant documents or other evidence in any format.
  - e. An explanation that the parties may have an advisor of their choice, who may be an attorney, and may inspect and review evidence.
  - f. An explanation that the college prohibits knowingly making false statements or knowingly submitting false information during the grievance process.
  - g. An explanation of the college's prohibition against retaliation.
11. Throughout the process, parties will be given written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings that they are invited or expected to attend, with sufficient time for the party to prepare to participate.
12. If, in the course of an investigation, the college decides to investigate allegations about the complainant or respondent that are not included in the initial notice to parties, a Title IX coordinator will provide notice of the additional allegations to the parties whose identities are known.
13. All parties have the right to be assisted by an advisor throughout the investigation and adjudication process, including at any related meeting. An advisor may, but is not required to be, an attorney. Parties may choose to provide their own advisor, and if the party does not, the college will make an advisor available to the party at no charge. A party may choose to proceed through the investigation phase without an advisor, but each party must have an advisor present for any hearing involving allegations of Title IX sexual harassment. When choosing an advisor, parties should be mindful of the advisor's availability. While the college will make reasonable efforts to take into account the advisor's availability, the college will not allow the advisor's unavailability to unreasonably delay the process and will assign a replacement if necessary to ensure the process moves forward without undue delay.
14. The advisor can help guide the party through the process, and may accompany the party to any meeting with a college employee, any meeting with an investigator, and to the hearing, but does not function as the party's representative and does not participate directly in meetings or hearings related to investigation or adjudication, except for the

purposes of questioning witnesses as is explained below. Advisors must follow these procedures and the [rules of decorum](#). They may consult with and advise the party they are assisting, but may not disrupt an investigatory meeting, and may not speak directly to the investigator. As discussed further below, at a Title IX sexual harassment hearing, an advisor may ask relevant questions of the other party and any witness, in accordance with these procedures and provided the advisor complies with the college's [rules of decorum](#). Beyond their roles asking permitted questions and as an advisor to their party, advisors will not actively participate at the Title IX sexual harassment hearings.

15. Confidentiality. College personnel will take reasonable steps to protect the privacy of persons and information. Process participants, including parties and witnesses, should understand that disclosing information learned during the investigation may compromise the integrity of the investigation and could also be construed as retaliation prohibited by college policies and codes of conduct. The college expects that persons will not disclose or re-disclose information learned during the course of the investigation, and both the complainant and respondent will be asked to sign a simple agreement stating that they will not disclose information learned or documentation received during the adjudication process, except as may be required to be able to discuss the allegations under investigation or to gather and present relevant evidence. Persons are, of course, free to discuss their own personal experiences, and to gather information necessary or appropriate to prepare for their participation in the investigation and adjudication process. While the college will not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence, the college prohibits conduct towards a witness that might constitute intimidation, retaliation, or "tampering" (for instance, by attempting to alter or prevent a witness's testimony).
16. Withdrawal of Complaint. Prior to a hearing, the complainant may withdraw the complaint. Withdrawal of the complaint may end the process, but in some cases the college may move forward with the investigation and complaint, even after the complainant withdraws it, in order to protect the interests and safety of the college community. The college will inform both parties in a timely manner of its decisions.
17. Acceptance of Responsibility. At any point in the process the respondent may choose to accept responsibility for the conduct alleged in the complaint. If the respondent does so, the process will likely proceed to informal resolution or to the determination of a recommended sanction by a hearing panel to determine the outcome. If both parties are interested in pursuing informal resolution following a respondent's acceptance of responsibility, that option is also available to them. Informal resolution is discussed above in Section 9.
18. Investigation Phase. A Title IX coordinator will designate an investigator to conduct an investigation of the alleged conduct. The designated investigator will have specific training and experience investigating allegations of sexual misconduct, including on how to determine issues of relevance, how to remain unbiased, the dynamics of sexual misconduct, the appropriate manner in which to receive and evaluate sensitive information, and the college's policies and procedures. A Title IX coordinator will oversee the investigation process.
19. The investigator will coordinate the gathering of information from the complainant, respondent, and other individuals or entities that may have relevant information regarding the allegations using any of the methods listed below. The investigator may

share information and documentation considered relevant to the allegations with the complainant and respondent for their comment or rebuttal. Relevant information is information that may assist a hearing panel in determining whether it is more likely than not that the respondent is responsible for the behaviors alleged in the complaint.

20. In addition to reviewing any documents submitted by the complainant and respondent, the investigator will determine whether to obtain other records that may be relevant to the investigation, including, but not limited to documents, police records, electronic or other records of communications between the parties or witnesses, or records of other potentially relevant information. In seeking to obtain such evidence, the investigator will comply with applicable laws and Williams College policies. The investigator may visit sites or locations of potential relevance to the allegations in the complaint and record observations through written or photographic documentation.
21. The complainant and the respondent will have the opportunity to be interviewed separately by the investigator. The investigator may offer the parties the opportunity to participate in more than one interview. The statements of the parties will be audio recorded.
22. The investigator will make a good faith effort to contact and interview any identified witnesses, including those persons no longer at the college or who may not have any affiliation with the college. The parties will have the opportunity to provide witness names to the investigator. The investigator may also interview any other individual believed to have relevant information. The investigator will inform each witness or other individuals interviewed that they are prohibited from retaliating against any participant in the process, including the complainant, respondent, and other witnesses. Final decisions about whom to talk to and what to ask will be made by the investigator, who may decline to interview witnesses whom the investigator believes have only irrelevant or cumulative information. The statements of witnesses will be audio recorded.
23. The investigator may contact any expert the investigator determines is necessary to ascertain the facts related to the complaint or other information the investigator determines is necessary to assist a hearing panel in determining whether it is more likely than not that the respondent is responsible for the allegations in the complaint.
24. The College will not require that parties disclose medical and counseling records, which are privileged and confidential documents; such records cannot be shared with anyone other than the treating professional unless the patient voluntarily agrees to disclosure. The investigator will review the records and will use discretion to determine what information, if any, is relevant to the adjudication of the complaint. Parties are reminded that while only records deemed to be relevant to the resolution of the complaint will be included in the investigation report, all evidence that is directly related to the allegations will be made available to the other party for inspection and review. Please also note that if a party decides to produce such records, the records must be produced in their entirety. The production of excerpts or selected documents will not be considered, though the investigator may redact portions of such records that are not relevant before including them in the investigative report or not directly related to the allegations before making them available for inspection and review by the other party. A party who does not wish to provide substantive medical records may decide to voluntarily provide a verification of therapeutic or medical services to the investigator, confirming simply that such treatment occurred, but not providing any details regarding the treatment.

## 25. Report and Responses

- a. **Content.** The investigator will prepare an investigative report summarizing and analyzing the relevant information determined through the investigation and referencing any supporting documentation or statements. The investigative report may include: summaries of interviews with the complainant, respondent, third-party witnesses, experts, and any other individuals with relevant information; photographs of relevant sites or physical evidence; and electronic records and forensic evidence. The investigator may provide a summary of their impressions including context for the information. The investigator will not make a determination as to whether or not an alleged violation occurred; that decision is reserved for the hearing panel.
- b. **Distribution of Draft to Parties.** The complainant and the respondent will receive a copy of the draft investigative report and will have an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the complaint, including any inculpatory or exculpatory evidence whether obtained from a party or other source and any evidence that has not been included in the investigator's report. The draft report and evidence will also be shared with each party's advisor unless a party requests otherwise. The parties have 10 days from receipt of the draft report to submit a written response to the investigator, which the investigator will consider prior to completion of the investigative report. Parties may present arguments in disagreement with an investigator's determination about relevance, propose corrections, provide appropriate context, point out relevant evidence that seems to be missing, or identify additional witnesses that should be interviewed. The investigator has discretion to decide whether to incorporate the parties' requested changes, pursue additional evidence, or otherwise address the parties' submissions.
- c. **Final Report.** The investigator will then create the final investigative report that fairly summarizes relevant evidence and, at least 10 days before the hearing or other time of determination regarding responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.

Each party will be permitted to write a response to the final investigative report to be shared with the hearing panel and must provide any such response within 7 days of receiving the final report. The complainant and respondent will each be given a copy of the other's written response prior to the hearing but will not have an opportunity to provide any additional written response.

Parties' written responses will be provided to the hearing panel along with the investigative report. Before presenting the responses to the panel, the hearing officer will review them for any irrelevant or impermissible material and either require that material be removed or redacted from the responses.

26. **Determination of Hearing Process / Mandatory Dismissal of Title IX Complaints.** If the complaint is not resolved through an informal process, then the hearing process will be

determined as follows:

- a. If the conduct alleged in the complaint and revealed in the investigation falls within the definition of Title IX sexual harassment, the College will adjudicate the issue of responsibility for Title IX sexual harassment according to procedures set forth below in the following Sections.
- b. If the alleged conduct would not constitute sexual harassment as defined under Title IX even if proven, or the conduct did not occur in the college's education program or activity, did not occur against a person in the United States, or did not occur against a member of the Williams College community, then a Title IX Coordinator will dismiss the complaint for purposes of Title IX. The complaint will be adjudicated using the procedures described in Section VII, Appendix A, II.B.3b or III.B.3b as applicable.
- c. A Title IX coordinator will promptly send the parties simultaneous written notice of any Title IX dismissals, the basis for the decision, and which hearing process will be used to adjudicate the complaint. Such written notice will be provided as soon as it is clear to the Title IX coordinator that the alleged conduct falls outside the jurisdiction of Title IX and no later than two days following receipt of the parties' final written responses to the investigative report. A Title IX coordinator's decision to dismiss a complaint for purposes of Title IX may be appealed under certain circumstances, as discussed below in Section 36.

## 27. Title IX Sexual Harassment Hearing Process

- a. **Composition of Hearing Panel.** Hearings to decide complaints of sexual harassment as defined under Title IX shall be conducted by a hearing panel. The hearing panel is composed of five persons that are drawn from the Standing Grievance Panel.

If a complainant is a student, the panel will usually consist of a member of the office of the Dean of the College plus four additional members, drawn from the Standing Grievance Panel. If the respondent is a member of the faculty, at least two persons on the adjudication panel will be faculty. If the respondent is a member of the staff, at least two persons on the adjudication panel will be staff.

If one party in the complaint is a member of the faculty and the other party is a member of the staff, the adjudication panel will consist of two members of the faculty, two members of the staff, and a chair. If the complainant and respondent are both faculty, then the panel will consist of five members of the faculty, one of whom will be chair. If the complainant and respondent are both staff, then the adjudication panel will consist of five members of the staff, one of whom will be chair.

- b. All hearing panel members receive training as required under the Title IX regulations, including on the following topics: how to determine issues of relevance; how to remain unbiased in decision making; the dynamics of sexual 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; and the College's policies and procedures.

- c. Prior to issuing the notice of hearing described below, a Title IX coordinator will provide each party with the full list of potential panelists. Each party will have 24 hours to identify anyone on the list whom they believe cannot be objective in serving on the panel and must provide a brief explanation for that belief.
- d. The college will appoint a non-voting hearing officer to conduct the hearing who will also be trained in accordance with the Title IX regulations as described above.
- e. Notice of Hearing. A Title IX coordinator will issue a notice of hearing to the complainant and the respondent. The notice of hearing will identify the date, time, and place of the hearing and provide the names of the hearing panel members who have been chosen to serve on the panel for that particular matter. The notice of hearing will be sent at least 7 days prior to the hearing date unless the complainant and respondent agree to an earlier date. All witnesses will also be given advance written notice of the date, time, and location of and participants in the hearing. The hearing will be conducted by the use of videoconferencing technology enabling participants simultaneously to see and hear each other. If both parties request an in-person hearing, a Title IX coordinator may grant that request upon a finding that there is a compelling reason for doing so.
- f. Pre-Hearing Procedures.
  - i. Request to Reschedule Hearing. Either party may request to reschedule the hearing. Requests to re-schedule must come directly from the complainant or respondent, must be submitted to a Title IX coordinator as soon as possible and at least 4 business days prior to the scheduled start of the hearing, whenever possible, and must specify the reasons for the request. A Title IX coordinator will decide whether to grant such a request. Title IX coordinators retain the discretion to reschedule the hearing at any time for good cause.
  - ii. Request to Present Witnesses Not Included in Investigative Report. All witnesses whose testimony is included in the investigative report will automatically be given notice of the hearing with a request that they attend. The college will attempt to schedule the hearing at a time when all witnesses are available, but the hearing officer retains discretion to proceed with the scheduled hearing if a witness is unavailable or to reschedule the hearing as appropriate in the circumstances. If a party seeks to call a witness whose testimony was considered by the investigator but not included in the investigative report, such a request must be made to a Title IX coordinator at least 4 days before the scheduled hearing and must include the following:
    - 1. Name, e-mail address and phone number of witness the party would like to call;
    - 2. A brief description of the relevant information the witness is expected to provide at the hearing; and

3. A summary of why the witness's presence is relevant to a decision on the complaint.
- iii. The hearing officer will determine whether the proposed witness has relevant information to offer at the hearing and will inform the party of their decision at least 48 hours before the scheduled start of the hearing.
  - iv. If a party seeks to call a witness whose name was not previously given to the investigator, that party must make such a request to a Title IX coordinator as outlined above, and must also include in the request an explanation as to why the witness's name was not previously provided to the investigator. The hearing officer will permit such witnesses to testify at the hearing in rare cases where the party making the request has only learned the identity of the witness or the relevance of the witness's testimony following completion of the investigative report. The hearing officer retains discretion to postpone the hearing in light of such newly discovered witness testimony and to ask the investigator to interview the witness and amend the investigative report as appropriate.
  - v. Both parties and the hearing panel will learn, prior to the hearing, the list of witnesses expected to appear. All parties and witnesses called to participate in a hearing are encouraged but cannot be compelled to participate.
  - vi. Request to Present Evidence Not Included in Investigative Report. If a party wishes to present documents or other evidence that was made available to the investigator but not included in the investigative report, the requesting party must submit their request in writing (in advance of the hearing) together with an explanation of the following for each document or other piece of evidence:
    1. Identification and description of the document or other evidence the party intends to present; and
    2. A summary of why the document or other evidence is relevant to making a decision on the complaint.
  - vii. The hearing officer will determine if the additional documentation or other evidence is relevant, permitting its use at the hearing. If the additional documentation or evidence is approved, it will be shared with the parties and the hearing panel at least 48 hours prior to the hearing.
  - viii. If a party seeks to present evidence at the hearing that was not previously made available to the investigator, that party must make such a request to a Title IX coordinator as outlined above, and must also include in the request an explanation as to why the specific piece of evidence was not previously provided to the investigator. The hearing officer will permit use of such evidence at the hearing in rare cases where the party making the request has only learned of the existence of the evidence or its relevance following completion of the investigative report. The hearing officer retains discretion to postpone the hearing in light of such newly discovered evidence and to ask the investigator to consider the newly discovered

evidence and amend the investigative report as appropriate.

## 28. Hearing Requirements

- a. **Participants.** Those who may be present at the hearing are: the complainant, the respondent, each party's advisor, witnesses, the hearing officer, and the hearing panel. Witnesses may only be present at the hearing during the call to order and confidentiality portions of the hearing and when they are being questioned. The complainant and respondent may be present throughout the proceedings.
- b. **Attendance.** If a party or any witness fails to attend a hearing, the hearing may be held in their absence, or it may be delayed as may be reasonably necessary to secure their participation. The decision whether to proceed or postpone the hearing will be made by the hearing officer in consultation with a Title IX coordinator.<sup>1</sup>
- c. **Standard of Evidence.** The hearing panel will determine the respondent's responsibility by a preponderance of the evidence standard, which is whether the evidence supports a finding that it is "more likely than not" that the respondent is responsible for the alleged violation(s).
- d. **Relevance.** Only relevant testimony and other evidence may be presented to the hearing panel and considered by the panel in making a determination of responsibility. Evidence is relevant if it tends to make a fact of consequence more or less likely to be true than it would be without the evidence. For purposes of clarity, the following information is deemed not relevant:
  - i. information protected by a legally recognized privilege unless the privilege has been waived;
  - ii. evidence about a complainant's prior sexual history, except as set forth below; and
  - iii. any party's medical, psychological, and similar records unless the party has given voluntary, written consent.
- e. Questions and evidence about the complainant's prior sexual behavior or sexual predisposition are not relevant except in two narrow scenarios: (1) when evidence of prior sexual behavior is offered to prove that someone other than the respondent committed the misconduct in question and (2) when the sexual history evidence concerns specific sexual incidents with the respondent and is offered to prove consent.
- f. Relevance determinations related to a respondent's prior sexual history will be made on a case by case basis. In the case of either party, the hearing officer may direct the hearing panel to give less weight to evidence about that party's prior sexual history when determining whether it is more likely than not that the

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<sup>1</sup> The following language was removed from these procedures in accordance with the court's decision in *Victim Rights Law Center et al. v. Cardona et al.*, 1:20-cv-11104-WGY (D. Mass. Aug. 10, 2021): "If a party or witness chooses not to participate in the hearing and make themselves available for cross-examination, the hearing panel cannot rely on that person's prior oral or written statements in reaching its decision about responsibility."

respondent is responsible for the allegations in the complaint.

- g. Recording Proceedings. The college will make an audio or audiovisual recording of the hearing and will make it available: to the parties for inspection and review, for reference by the hearing panel or hearing officer during deliberations, and for review by the Vice President for Institutional Diversity, Equity and Inclusion during any appeal. The hearing panel's deliberations are not recorded.

## 29. Conducting the Hearing

- a. Call to Order. The hearing officer will call the hearing to order. The hearing officer will describe the hearing process and provide an opportunity for all parties to ask procedural questions. The hearing officer will ask everyone to state their name and identify their role in the hearing.
- b. Confidentiality. The Hearing Officer will inform parties that the proceedings are confidential as required under law and college policy and that information received at the hearing should not be shared outside the hearing room except as allowed by college policy and applicable law. The hearing officer will repeat a brief overview of the process and discussion of confidentiality for each witness at the start of their testimony.
- c. Questioning. The hearing will then proceed directly to questioning. Questioning at the live hearing will be conducted directly, orally, and in real time by the hearing officer, hearing panel, or a party's advisor and never by a party personally. As discussed above, if a party does not have an advisor, the college will provide an advisor to ask questions on that party's behalf. Only relevant, noncumulative questions may be asked of a party or witness.
- d. Before a complainant, respondent, or witness answers a question, the hearing officer must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. Neither parties nor their advisors will be given an opportunity to challenge the hearing officer's relevance determinations during the hearing.
- e. The advisor for each party may ask questions of any other party or witness but may not ask questions of their own party. The hearing officer will determine the order in which parties and witnesses are questioned. In the case of non-party witnesses, as between the parties' advisors, the advisor for the complainant will be given the opportunity to ask questions first, followed by the advisor for the respondent. The hearing officer and hearing panel may ask questions of any witness at any time.
- f. Questioning must adhere to the College's [rules of decorum](#) at all times and failure to do so may, at the hearing officer's discretion, result in an advisor being barred from further participation in the hearing.
- g. The hearing panel cannot draw an inference regarding the respondent's responsibility based solely on a party's or witness's absence from the live hearing

or refusal to answer cross-examination questions.<sup>2</sup> If a party chooses not to participate in a hearing, their advisor may still participate for purposes of asking questions of the other party and witnesses. If a party's advisor also chooses not to participate, the college will appoint an advisor for the purpose of asking such questions.

30. Recall of Witnesses. The hearing panel reserves the right to ask the hearing officer to recall any party or witness during the hearing process for further questions and to seek additional information necessary to make a decision.
31. Discretion of the Hearing Officer. The hearing officer retains discretion to alter, at any time, the order of the hearing process or to call for a break during the course of the proceeding. A party may ask the hearing officer for a break at any point in the hearing, which request will be granted at the hearing officer's discretion. Parties may seek support from someone not participating in the hearing during any permitted break.
32. Dismissal. At the conclusion of all questioning, the hearing officer will conclude the hearing and dismiss all parties.
33. Deliberation, Finding of Responsibility, and Recommended Sanctions.
  - a. Deliberation and Finding of Responsibility. The hearing panel will deliberate and make a decision regarding responsibility. Four "yes" votes are required for a finding of responsibility. The panel's finding will be communicated simultaneously to the parties in writing.
  - b. Statements of the Parties. If the hearing panel's finding is that the respondent is responsible for some or all of the conduct described in the complaint, the complainant and respondent will each have the opportunity to briefly address the hearing panel, either in person, by phone or video conference call, or in writing, before a recommended sanction is considered. Any such presentation is optional and would not be made in the presence of the other party. This opportunity is not one in which the facts of the case are discussed or questions are asked by the panel. Rather, it is an opportunity for both parties to present directly to the hearing panel in their own "voice" any additional information, including information about the impact of the incident in question. This opportunity is limited to 15 minutes or the written equivalent thereof.
  - c. Recommended Sanctions. The panel will then recommend a sanction to the relevant senior administrator (Dean of the Faculty for respondents who are members of the faculty, the Director of Human Resources for respondents who are members of the staff.) The complainant and respondent will each be informed in writing of the recommended sanction.

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<sup>2</sup> The following language was removed from these procedures in accordance with the court's decision in *Victim Rights Law Center et al. v. Cardona et al.*, 1:20-cv-11104-WGY (D. Mass. Aug. 10, 2021): "If a party or witness does not make themselves available for cross-examination at the live hearing, the hearing panel may not rely on any statement of that party or witness in reaching a determination regarding responsibility."

34. Written Decision. The hearing panel will issue a written decision explaining the finding of responsibility and recommendation of any sanctions. The written decision will include the following:

- a. Identification of the allegations potentially constituting sexual harassment;
- b. 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;
- c. Findings of fact supporting the determination;
- d. Conclusions regarding the application of the code of conduct to the facts
- e. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions recommended to be imposed on the respondent, and whether remedies designed to restore or preserve equal access to the college's education program or activity will be provided by the college to the complainant; and
- f. The procedures and permissible bases for the complainant and respondent to appeal.

35. Notice of Outcome. A Title IX officer will simultaneously distribute the written decision to the respondent and the complainant. Neither the complainant nor the respondent is prohibited from disclosing the outcome of the hearing, but the hearing panel's written decision is subject to the non-disclosure agreement signed by the parties.

36. Appeals

- a. Request & Timeline. Both parties have the right to request an appeal of the decision made by the hearing panel or any decision to dismiss a complaint or any allegations therein. The parties have 15 days following the receipt of the written decision to request an appeal. Requests for appeal, with reasons, should be sent in writing within the 15-day time limit to the Vice President for Institutional Diversity, Equity and Inclusion, Leticia Haynes.
- b. Grounds for Appeal. The right of appeal is limited to the following grounds: (a) a procedural irregularity that affected the outcome of the matter, (b) newly discovered evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made that could affect the outcome of the matter (deliberate omission of information by the appealing party in the original investigation is not grounds for appeal); and (c) the fact that a Title IX coordinator, investigator(s), hearing officer, or member of the hearing panel 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.
- c. Procedures on Appeal. All parties will be notified of any written request for an appeal, and will have a 15-day period to submit a written statement in support of, or challenging, the outcome. If either the complainant or respondent wishes to have other people interviewed to determine whether they have substantive new information pertinent to the appeal that was not available at the time of the original decision, the following process will be followed: (1) The complainant or respondent will write to a Title IX coordinator describing whom they wish to have

interviewed and on what topic. (2) The Title IX coordinator or designee will ask the person whether they do, in fact, have information on that topic. (3) If they do, the investigator will ask them questions or request a written statement, and a live hearing will be reconvened to allow the witness to be cross-examined. The appeal process will be suspended until the completion of these steps.

- d. If the appeal is granted, its disposition is determined by the Vice President for Institutional Diversity, Equity and Inclusion, who may affirm the decision of the panel, may return it to the original panel or may summon a new panel, and who may task those panels with reviewing the decision either in whole or in part. A decision by the Vice President for Institutional Diversity, Equity and Inclusion to affirm the original panel's decision shall be final.
  - e. Review by a panel after referral from the Vice President for Institutional Diversity, Equity and Inclusion may result in a change in the decision as to whether or not a violation occurred, or may result in an increase in the recommended sanction, a decrease in the recommended sanction, or no change in the recommended sanction. If the decision of the reviewing panel is to affirm the original decisions as to violation and as to recommended sanction, that decision shall be final. If the decision of the reviewing panel is to change the original decision either as to violation or as to sanction, the reviewing panel's decision shall be subject to appeal in accordance with the foregoing procedures. The results of any such second appeal process shall be final and not subject to further appeal.
  - f. The results of any appeal and the rationale for the result will be communicated simultaneously and in writing to the complainant and the respondent by a Title IX coordinator.
37. Time Frame for Adjudication. The college endeavors to conclude the adjudication process for all complaints of sexual misconduct within 90 days. This timeframe balances the desire for prompt resolution and finality for all parties with the need to conduct a thorough and fair process. Any of the deadlines contained in these procedures may be extended by the college on its own or at the request of a party. No delay or extension shall be made except for good cause and each such decision will be communicated in writing to the complainant and respondent along with the reason for the college's decision. Decisions not to grant an extension will be communicated to the requesting party in writing.
38. Final determination of sanction in cases involving respondents who are members of the faculty.
- a. If the recommended sanction is termination of the respondent's appointment for cause, the Dean of the Faculty will initiate proceedings pursuant to Section II-V: Termination of Faculty Appointment for Cause of the Faculty Handbook. If the recommended sanction is a major sanction, such as suspension from service for a stated period, the Dean of the Faculty will initiate proceedings pursuant to Section II-W: Procedures for Imposition of Sanctions on Faculty Other than Dismissal, "Major Sanctions," of the Faculty Handbook. If the recommended sanction is a minor sanction, the Dean of the Faculty will initiate proceedings in accordance with Section II-W., "Minor Sanctions," of the Faculty Handbook. In all cases covered by this policy the sole determination to be made according to the

processes described in Sections II-V: Termination of Faculty Appointment for Cause and II-W: Procedures for Imposition of Sanctions on Faculty Other than Dismissal of the Faculty Handbook will be the final sanction to be imposed on the respondent. After any appeal, the determination by the adjudication panel that the respondent violated the college's Non-Discrimination, Harassment and Sexual Misconduct Policy shall be final and shall not be subject to review or reconsideration in the sanctions process.

- b. The sanctions panel convened at this stage of the process will receive as evidence the letter of findings and recommended sanction from the adjudication panel described in sub-section III.B.3b. The sanctions panel will also have access to the report of the investigator and responses written by either party to that report, and to previous disciplinary records of the respondent, if any, as well as the recording of the hearing. The sanctions panel may request assistance from a Title IX coordinator.
  - c. The faculty member does not have the right to compel the complainant to appear before the sanctions panel. The complainant's testimony may be represented by the investigator's report and the recording of the hearing.
  - d. Although the complainant cannot be compelled to appear before the sanctions panel, in all cases covered by this policy the complainant will have an equal right as the respondent to be heard by the Dean of the Faculty, any hearing committee convened pursuant to the provisions of Section II-V: Termination of Faculty Appointment for Cause or II-W: Procedures for Imposition of Sanctions on Faculty Other than Dismissal, and by the Board of Trustees.
  - e. Final decisions as to sanctions will be reported in writing simultaneously to the complainant and the respondent, as well as to the Title IX Coordinator.
39. Final determination of sanction in cases involving respondents who are members of the staff.
- a. Final determination of sanctions involving respondents who are members of the staff will be made by the Director of Human Resources, in conjunction with the Assistant Vice President for Institutional Diversity and Equity/Title IX Coordinator and relevant supervisor(s) of the staff member. They may take into account previous disciplinary records of the staff member in making their decision regarding sanction. Final decisions as to sanctions will be reported in writing simultaneously to the complainant and the respondent, as well as to the Title IX Coordinator.

#### 40. Additional Matters

- a. Retaliation. Retaliation of any kind against the person who reports sexual misconduct or against any person who participates or chooses not to participate in the adjudication process is strictly prohibited. Any retaliation will be treated as a new and additional violation of the college's Non-Discrimination, Harassment, and Sexual Misconduct Policy.

- b. Throughout the process parties will have access to support services provided by the college, including student support services for students and the Employee Assistance Program for employees.
- c. In the event that a participant in the process raises a claim that a Title IX Coordinator, investigator(s), hearing officer, or member of the hearing panel has a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent, that might affect the outcome of the process, the Title IX Coordinator will review the claim, determine its validity, and if necessary, appoint an alternate without such a conflict or bias. If the claim relates to a Title IX Coordinator, the President of the College, or her designee shall review the claim, determine its validity, and if necessary, appoint an alternate without such a conflict or bias.