

## **Sexual Misconduct Procedures Including Title IX Sexual Harassment Adjudication Process**

### **1. Introduction**

Williams College is committed to establishing and maintaining a learning and working environment that is free from sexual assault, sexual harassment and other sexual misconduct, remedying the effects of such misconduct when it occurs, and preventing its re-occurrence. The term “sexual misconduct” includes sexual assault, sexual harassment, sexual exploitation, stalking, dating violence, domestic violence, and Title IX sexual harassment, all of which have more complete definitions, which can be found in the policy titled [Defining Sexual Misconduct on the college’s Title IX website](#). These behaviors threaten our learning, living, and work environments and are prohibited.

The following procedures apply to all reports and complaints of sexual misconduct brought against Williams College students. (Policies involving complaints against faculty or staff can be found in the [Resources for Employees section of the college’s Title IX website](#). These procedures provide information about resources, reporting options, and prompt and equitable resolution options and seek to reinforce the college’s commitment to preventing and responding to sexual misconduct. The college is committed to implementing these procedures in a manner that is consistent with applicable law and is fair, equitable, and humane for all participants.

In May 2020, the Department of Education issued new regulations governing schools’ response to certain types of sexual misconduct. Those regulations, which became effective August 14, 2020, require all colleges to use specific procedures to address allegations of what the Department calls sexual harassment and what the college calls “[Title IX sexual harassment](#).” The procedures described below have been updated to incorporate these new Department of Education requirements.

The college also prohibits and has established procedures to address sexual discrimination that does not involve sexual misconduct. These issues are addressed in the college’s [Non-Discrimination Policy and Discrimination Grievance Procedures](#).

### **2. Reporting Sexual Misconduct**

All members of the Williams community are encouraged to report incidents of sexual misconduct, whether they themselves experienced the incident or whether they observed misconduct against another person.

There are several reasons why the college encourages reporting. First, the college has resources that you can use for support and accommodation after an incident. Second, it is important for the college to know about an incident in order to maintain the safety of the community. Finally, the college offers a way to discipline the person who committed the sexual misconduct if they are a member of the college community. The police offer a way to pursue prosecution whether or not the accused person is a member of the Williams community. If an individual reports or seeks care for an incident of sexual misconduct during which they consumed alcohol or drugs, they will not be subject to disciplinary action regarding the alcohol or drug use.

Reports may be made by email, phone, or in person. People reporting may provide as much or as little detail as they feel comfortable with. To report a sexual assault or other sexual misconduct to the college contact:

- Campus Safety and Security at 413-597-4444
- Any Dean at the Dean of the College's office at 413-597-4261 or by email
- Title IX Coordinator, Toya Camacho by phone at 413-597-3301, by email to [tcc2@williams.edu](mailto:tcc2@williams.edu), or in person at Hopkins Hall Room 110
- Deputy Title IX Coordinator, Marlene Sandstrom by phone at 413-597- 4261, by email to [msandstr@williams.edu](mailto:msandstr@williams.edu), or in person at Hopkins Hall Room 200

To report a sexual assault to the police dial:

- 911
- Williamstown Police Department at 413 458 5733

The on-campus reporting option is not exclusive of other reporting options, such as reporting to the police, and both mechanisms may be employed concurrently or consecutively.

Students should be aware that most college employees have an obligation to report any sexual misconduct of which they become aware to the Title IX Coordinator. More information about confidential resources for students, including a list of college employees who are designated as confidential and generally do not have an obligation to report sexual misconduct can be found in the [Confidentiality and Privacy section of the college's Title IX website.](#)

After the college receives a report of sexual misconduct, the Title IX Coordinator or 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 misconduct to discuss the availability of supportive measures and to explain the process for filing a formal complaint. Supportive measures, which are available regardless of whether a formal complaint is filed, are discussed in more detail in [Section 4](#) below. If the person reporting is not the person who experienced the misconduct, a Title IX coordinator will usually also contact the person who

made the report to determine whether that person would like to further discuss the information provided.

### **3. Filing a Formal Complaint**

To initiate the college's investigation and adjudication process, or to pursue informal resolution, a formal complaint must be filed. Anyone (including current and former students, faculty, staff members, visitors, or alumni) who believes they have experienced sexual misconduct or harassment may file a formal complaint. Williams will investigate formal complaints of sexual misconduct against current students, faculty members, or staff and may investigate complaints against former students, faculty, or staff.

The person filing the formal complaint is called the complainant. The person who is alleged to have committed the sexual misconduct is called the respondent. The respondent is not presumed responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the process.

To initiate the process, the complainant must sign (digitally or physically) and submit a written document, called the "formal complaint," in paper or electronic format, to a Title IX coordinator. The formal complaint must contain sufficient information regarding the allegations of sexual misconduct to permit the respondent to understand the allegations and be able to adequately respond, and for the college to initiate an investigation. At a minimum, the formal complaint must indicate the name of the accused student or respondent, if known; the date or approximate date of the alleged misconduct; and a description of it, including the location, if known. Further, the formal complaint must indicate, to the best of the complainant's ability, the alleged form(s) of sexual misconduct, as detailed in the college's sexual misconduct policy, that the complainant alleges were committed. The formal complaint does not need to include every detail related to the allegations, however; additional information may be discovered during the investigation.

A Title IX coordinator will reach out to the complainant to request additional detail if the formal complaint includes insufficient information regarding the allegations to permit the respondent to understand the allegations being brought and adequately respond or the college to initiate an investigation. If the investigation reveals other related allegations of instances of sexual misconduct not otherwise detailed in the formal complaint, the complainant will have the opportunity to amend the formal complaint to include allegations of these additional related instances.

The college may consolidate multiple formal 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 formal complaints where the allegations of sexual misconduct 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. The college may also choose to consolidate a formal complaint of sexual misconduct with an allegation that a party violated another portion of the college's code of conduct..

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 misconduct. 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 misconduct by a particular respondent, or whether the allegations involved significant physical injuries, assault or battery, threats of violence, use of weapons, or similar factors. The Title IX coordinator's decision to sign a formal complaint generally will occur only after the Title IX coordinator has contacted the person alleged to have experienced the sexual misconduct to discuss the availability of supportive measures, considered their wishes with respect to supportive measures, and explained the process for filing a formal complaint. 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.

Other than a Title IX coordinator, no other third parties can file formal complaints, but they can report sexual misconduct as described above.

#### **4. Supportive Measures**

Supportive measures 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 to deter sexual misconduct.

Supportive measures may include, for example, counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. More information about the college's procedures for issuing and reviewing no-contact orders can be found [on the Title IX website](#). 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. For example, confidentiality may be impossible

when a no-contact order is appropriate and the respondent would need to know the identity of the complainant to comply with it, or campus safety and security is informed about the no-contact order in order to help enforce its terms. Either party may appeal the imposition of a supportive measure as it pertains to them by writing to the Dean of the College, whose decision is final.

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.

## **5. Emergency removal**

The college reserves the right to remove a respondent from campus or any part of the college's education program or activity on an emergency basis, if, following an individualized safety and risk analysis, it determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual misconduct justifies removal. This assessment ordinarily will be made by a group comprising the Title IX Coordinator, the Director of Sexual Assault Prevention and Response, the Associate Director for Clery Compliance and Training, and the Assistant Director for Violence Prevention. Any decision to remove a student on this basis may be appealed in writing to the Dean of the College, whose decision is final.

## **6. Notice of Alleged Violations**

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 copy of these procedures.
- The allegations of sexual misconduct, including any potentially constituting 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 before any initial interview. It is important to note that complete details might not emerge until the investigation process is underway.
- An explanation of the burden of proof and that respondent is not presumed responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
- A request that the parties preserve any potentially relevant documents or other evidence in any format.
- An explanation that the parties may
  - have an advisor of their choice, who may be an attorney, and
  - may inspect and review evidence in cases involving allegations of Title IX sexual harassment.

- An explanation that the college prohibits knowingly making false statements or knowingly submitting false information during the grievance process, as described in Section 20 below.
- An explanation of the college's prohibition against retaliation.

At the time the notice of alleged violations is sent to the parties, each party will also be assigned a dean who can serve as a resource to students to help them manage their academic life at the college while they participate in the adjudication process.

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.

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.

## **7. Informal Resolution**

The college may establish alternative procedures for cases where the complainant and respondent are both interested in pursuing an informal resolution of the formal complaint and the college deems the matter to be appropriate for informal resolution. Informal resolution will never be available to resolve allegations that an employee engaged in sexual misconduct towards a student. Either party may reach out to a Title IX coordinator to learn more about any options available for informal resolution.

The college will never pressure any person to engage in informal resolution; that decision must be made voluntarily by both parties who would be asked to sign a written consent to participate. Any informal resolution procedure would give both parties the right to withdraw from the informal resolution and resume the standard adjudication process at any time prior to the conclusion of the informal resolution process.

## **8. Advisors**

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 have only one advisor present at meetings, interviews, and any hearing. 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.

The advisor can help guide the student 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.

## **9. Confidentiality / Information Sharing**

College personnel will take reasonable steps to protect the privacy of persons and information. All parties, witnesses, and advisors 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 the college's code of conduct. In certain circumstances, it might even give rise to civil liability. For these reasons, 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. Witnesses and advisors may also be required to sign an agreement regarding confidentiality.

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).

## **10. Withdrawal of Formal Complaint**

Prior to a hearing, the complainant may withdraw the formal complaint. Withdrawal of the formal complaint may end the process, but in some cases the college may move forward with the investigation and formal 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.

## **11. Acceptance of Responsibility**

At any point in the process the respondent may choose to accept responsibility for the conduct alleged in the formal complaint. If the respondent does so, the process will likely proceed directly to a determination of the appropriate sanction. If both parties are interested in pursuing informal resolution following a respondent’s acceptance of responsibility, that option may also be available to them, as discussed in Section 7.

## **12. Investigation Phase**

**A. Investigator.** 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.

**B. Investigation Process.** 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 formal complaint.

**C. Document/Records Review.** In addition to reviewing any documents submitted by the complainant and respondent, the investigator will determine whether to obtain other records or other information 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 formal complaint and record observations through written, photographic or other means.

**D. Complainant and Respondent Interviews.** The investigator will take primary statements from the complainant and respondent and ask follow up questions. The investigator may want to speak with the complainant and respondent on more than one occasion during the course of the investigation. The statements of the parties will be audio recorded.

**E. Witness Interviews.** The investigator will make a good faith effort to contact and interview any identified witnesses believed to have relevant information, 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.

**F. Experts.** The investigator may contact any expert the investigator determines is necessary to ascertain the facts related to the formal complaint or other information the investigator determines is necessary or helpful to assist a hearing panel in determining whether it is more likely than not that the respondent is responsible for the allegations in the formal complaint.

**G. Mental and Physical Health Records.** The college will not require that students 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. Therefore, individuals should be aware that there are legal implications to agreeing to share privileged records in whole or in part. The production of partial records may lead to the waiver of privilege and the production of additional records. Individuals are encouraged to seek advice from a knowledgeable source about the possible consequences of releasing this type of information. A party who, after due consideration, believes that their own medical or counseling records would be helpful in determining whether sexual misconduct occurred may voluntarily decide to present their own medical or counseling records to the investigator by providing a signed, written consent 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 formal complaint. As discussed in more

detail below, parties should be aware that while only records deemed to be relevant to the resolution of the formal complaint will be included in the investigative 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.

### **13. 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, including all exhibits, and transcripts of all interviews with parties and other witnesses. The parties will also 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 formal complaint and not included in the investigator's report. The draft report and evidence will also be shared with each party's advisor.

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 and if so how to incorporate the parties' requested changes, pursue additional evidence, or otherwise address the parties' submissions. Each party will be permitted to see the other party's written response after they have submitted their own.

**C. Final Report and Responses.** The investigator will then create the final investigative report that fairly summarizes relevant evidence and, at least 14 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 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 10 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. The investigative report, the parties' responses, and all directly related evidence will be sent to the hearing officer. Before presenting the responses to the other party and remaining panel members, the hearing officer will review them for any irrelevant or impermissible material and either require that material be removed or redacted from the responses.

#### **14. Determination of Hearing Process / Mandatory Dismissal of Title IX Complaints**

If any part of the conduct alleged in the formal complaint or revealed in the investigation falls within the definition of Title IX sexual harassment described in the policy titled Defining Sexual Misconduct on the college's Title IX website, and the parties do not agree to resolve the matter informally, the college is required to hold a live hearing that permits parties' advisors to ask questions of the other party and all witnesses. In cases involving allegations of both Title IX sexual harassment and non-Title IX sexual harassment, the entire matter will proceed to a live hearing. The Title IX sexual harassment hearing process is described in detail in Section 15.

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 the formal complaint will be dismissed for purposes of Title IX and may instead be adjudicated using the procedures described in Section 16.

A Title IX coordinator will promptly send the parties simultaneous written notice of any Title IX dismissals, reason(s) therefore, and which hearing process will be used to adjudicate the formal 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 2 days following receipt of the parties' final written responses to the investigative report. A Title IX coordinator's decision to dismiss a formal complaint for purposes of Title IX may be appealed under certain circumstances, as discussed in Section 17.

## **15. Title IX Sexual Harassment Hearing Process**

**A. Composition of Hearing Panel.** Hearings to decide formal complaints of sexual harassment as defined under Title IX shall be conducted by a hearing panel. The hearing panel is composed of three persons, at least two of whom are drawn from a pool of volunteer Williams College staff members. The third panel member will be a hearing officer appointed by a Title IX coordinator who will conduct the hearing and vote as a member of the hearing panel. 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.

Prior to issuing the notice of hearing described below, a Title IX coordinator will provide each party with the full list of potential college employee 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.

**B. 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.

### **C. Pre-Hearing Procedures**

**1. Request to Reschedule Hearing.** Either party may request to reschedule the hearing. Requests to reschedule 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. The hearing officer and Title IX coordinators retain the discretion to reschedule the hearing at any time for good cause.

## **2. 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:

- Name, e-mail address and phone number of witness the party would like to call;
- A brief description of the relevant information the witness is expected to provide at the hearing; and
- A summary of why the witness' presence is relevant to a decision on the formal complaint.

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.

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.

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.

## **3. 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 such a request in writing to a Title IX coordinator no later than 4 days prior to the scheduled start of the

hearing. Any such request must contain a list of documents or other evidence that includes, as to each document or other piece of evidence:

- Identification and description of the document or other evidence the party intends to present; and
- A summary of why the document or other evidence is relevant to making a decision on the formal complaint.

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.

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.

#### **D. Hearing Requirements**

**1. 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. As determined by a Title IX coordinator, one or more college personnel may also be present as may be necessary to ensure the smooth functioning of the hearing. Witnesses will only be present at the hearing when they are being questioned. The complainant and respondent may be present throughout the proceedings. All people participating in the hearing remotely may be asked to sign a document or otherwise affirm to the hearing officer that no one else will be present with them or otherwise in communication with them during the hearing.

**2. 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>

**3. 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).

**4. 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:

- information protected by a legally recognized privilege, unless the privilege has been waived;
- evidence about a complainant's prior sexual history, except as set forth below; and
- any party's medical, psychological, and similar records unless the party has given voluntary, written consent.

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.

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 respondent is responsible for the allegations in the formal complaint.

**5. 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

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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."

President for Institutional Diversity, Equity and Inclusion during any appeal. The hearing panel's deliberations are not recorded.

## **E. Conducting the Hearing**

**1. 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 the parties and their advisors to ask procedural questions. The hearing officer will ask everyone to state their name and identify their role in the hearing.

**2. Confidentiality.** The hearing officer will inform parties that the proceedings are confidential as required under the Family Educational Rights and Privacy Act (FERPA) and that information received at the hearing should not be shared outside the hearing room except as allowed by FERPA or other 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.

**3. 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 in Section 8, 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.

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.

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.

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.

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.

**4. 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.

**5. 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.

**6. Dismissal.** At the conclusion of all questioning, the hearing officer will conclude the hearing and dismiss all parties.

**F. Deliberation, Finding of Responsibility, and Determination of Sanctions.**

**1. Deliberation and Finding of Responsibility.** The hearing panel will deliberate and make a decision regarding responsibility. All three panel members have equal voting power, and two votes are required for a finding of responsibility. The panel's finding will be communicated simultaneously to the parties in writing.

**2. 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 formal 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 the sanction is determined. 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

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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."

impact of the incident in question. This opportunity is limited to 15 minutes or the written equivalent thereof.

**3. Determination of Sanctions.** The hearing panel will then reach a decision about the appropriate sanction(s) by majority vote. The Dean of the College or designee will provide the panel with violation precedence and a student conduct history if applicable. In determining the appropriate sanction(s), the hearing panel may consider a number of factors including: the harm suffered by the complainant; any ongoing risk to either the complainant or the community posed by the respondent; the impact of the violation(s) on the community, its members or its property; any previous conduct violations; any mitigating or aggravating circumstances; and the information contained in any impact statements submitted by the parties. Possible sanctions if a student is found responsible for violation of the code of conduct with regards to sexual misconduct include the full range of disciplinary sanctions available at the college, including suspension from the college for one or more semesters and expulsion.

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

- Identification of the allegations potentially constituting sexual harassment;
- 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;
- Findings of fact supporting the determination;
- Conclusions regarding the application of the code of conduct to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions 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
- The procedures and permissible bases for the complainant and respondent to appeal.

**5. 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.

## 16. Non-Title IX Hearings

**A. Nature of Proceedings.** In cases where the sexual misconduct at issues does not fall within the definition of Title IX sexual harassment, did not occur in a college program or activity, or did not occur within the United States, the matter will be decided by a hearing panel of 3 staff members without a live hearing. If such a violation is found to have taken place, then the same panel also determines a sanction. Two “yes” votes are necessary for a finding that there has been a violation.

**B. Appointment of Panel.** For each case, the panel will be appointed by a Title IX coordinator. The panel will consist of three staff people who are trained to hear cases of sexual misconduct. The complainant and respondent will have the opportunity to state whether there are those they feel should not participate in the panel due to bias or any other reason which would prevent them from making a fair assessment of the evidence. The final decision on any such requests for recusal will be made by a Title IX coordinator.

**C. Panel Review of Evidence.** The panel will start its deliberations by reading the statements gathered by the investigator and the investigator’s report, along with the responses to the report from the complainant and respondent. After discussion, the panel will decide whether there are additional questions that need to be asked. If so, the investigator will go back to the parties to ask those questions.

**D. Panel Deliberation; Statements of the Parties.** The panel will decide whether there is a preponderance of evidence showing a violation of the college’s code of conduct as regards sexual misconduct. If the panel determines that there has been a violation, the complainant and respondent will each have the opportunity to briefly address the panel, either in person, by phone, video conference, or in writing, before the sanction is determined. (The two parties would do this separately – neither one in the presence of the other. It is optional to make such a statement, not required.) This opportunity is not one in which the facts of the case are discussed or questions are asked by the committee. Rather, it is an opportunity for both parties to present directly to the committee 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.

**E. Notice of Outcome.** The panel then determines a sanction. The decision and the sanction are communicated to both parties simultaneously and in writing by a Title IX coordinator.

## 17. 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 formal 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.

**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 other 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. (4) In cases involving allegations of Title IX sexual harassment, 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.

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. The Vice President for Institutional Diversity, Equity, and Inclusion will endeavor to make this initial decision within three weeks of receiving the parties' written statements. A decision by the Vice President for Institutional Diversity, Equity and Inclusion to affirm the original panel's decision shall be final.

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 sanction, a decrease in sanction, or no change in sanction. If the decision of the reviewing panel is to affirm the original decisions as to violation and as to 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.

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.

#### **18. Time Frame for Adjudication**

The college endeavors to conclude the adjudication process for all formal complaints of sexual misconduct within 90-120 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.

#### **19. Retaliation**

**A. Prohibition.** 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 code of conduct.

**B. Forms of Retaliation.** Retaliation is harmful action taken against someone who has made a report, filed a formal complaint, provided testimony, assisted, or in some other way participated or chosen not to participate in any manner in a disciplinary investigation or process. Retaliation could also include actions taken against someone who has intervened as a bystander to stop or attempt to stop misconduct.

Retaliation can include intimidating, threatening, coercing, or discriminating against an individual because of their participation or failure to participate in a disciplinary process, or because they opposed behavior that was a violation of the college's code of conduct. Retaliation may also include bringing charges against someone for code of conduct violations that arise out of the same facts or circumstances as a report or formal complaint of sexual misconduct, such as for drug or alcohol use.

If the actions directed at that individual would deter a reasonable person in the same circumstances from reporting misconduct, participating in a disciplinary process, or opposing behavior in violation of the college's code of conduct, it is deemed retaliatory.

## **20. False Statements and Information**

It is a violation of the college's code of conduct to knowingly make a false statement or otherwise knowingly provide false information in connection with a report, investigation, or adjudication of sexual misconduct under this policy. This prohibition against providing false information or statements does not apply to information or statements that are provided in good faith but ultimately found not to be substantiated. Students who violate this prohibition may be subject to discipline, and the college reserves the right to handle such an allegation within this sexual misconduct policy or as a separate matter pursuant to the college's student conduct procedures.

## **21. Recordkeeping**

The college will maintain the following records for 7 Years:

- Each sexual harassment investigation including any determination regarding responsibility;
- Audio or audiovisual recordings or transcripts of the hearing;
- Any disciplinary sanctions imposed on the respondent;
- Documentation of any supportive measures or other remedies provided to the complainant designed to restore or preserve equal access to the college's education program or activity;
- Any appeal and the result;
- Any informal resolution and the result therefrom;
- All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process.

In cases where the final disposition of a disciplinary case is expulsion, the Dean of the College retains student discipline records indefinitely.