

Title IX Sexual Harassment Complaint Process

Formal Complaint Requirement

This Title IX Sexual Harassment Complaint Process shall be available for allegations involving a Formal Complaint of Title IX Sexual Harassment.¹ The College may consolidate Formal Complaints as to allegations of Title IX Sexual Harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations arise out of the same facts or circumstances. A party may raise concerns to the Title IX Coordinator (or designee) as to any consolidation; however, the College retains the right to proceed with any consolidation in its sole discretion.

Jurisdiction of the College

By simultaneous written notice to the parties, the College *must* dismiss any Formal Complaint with regard to that conduct for purposes of Title IX Sexual Harassment, if the conduct alleged:

- Would not constitute Title IX Sexual Harassment as defined, even if proven;
- Did not occur in the College's education program or activity; or
- Did not occur against a person in the United States.

The College *may* dismiss any Formal Complaint for the purposes of Title IX Sexual Harassment if:

- A Complainant withdraws the Formal Complaint or any allegations therein;
- The Respondent is no longer enrolled or employed by the College; or
- Specific circumstances prevent the College from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.²

In the case that a Formal Complaint is precluded from review under the Title IX Sexual Harassment Complaint Procedure for jurisdiction purposes, the College reserves the right to address such other complaints under the Complaint Process (*found herein at Section L., II.*).

Step 1 – Investigation

Upon receipt of a Formal Complaint (preferably in the format of Appendix C), the Title IX Coordinator (or designee) must promptly contact the Complainant confidentially to discuss the availability of supportive measures and resources, consider the Complainant's wishes with respect to these supportive measures, and explain to the Complainant the Title IX Sexual Harassment Complaint Process. If a student is involved, the Title IX Coordinator shall notify the Vice President or Dean of Student Services.

Within five (5) days of receiving a Formal Complaint, the Title IX Coordinator will notify the Respondent in writing of the Formal Complaint (see Appendix D), provide the Respondent with a copy thereof and discuss supportive measures. The timeliness of such notification shall be in accordance with the appropriate collective bargaining agreement, if applicable. The Respondent shall have five (5) days from receipt of notice to submit to the Title IX Coordinator a written response to the Formal Complaint.

Where practicable, within fifteen (15) days from the date the Respondent's written response is received, or the date it was due if none was submitted, the Title IX Coordinator shall conduct an

¹ A College may address sexual harassment affecting its students or employees that falls outside Title IX's jurisdiction, including by providing supportive measures or pursuing discipline consistent with applicable policies.

² This decision may be appealed consistent with the appeal procedure in Step 4 below.

investigation and issue all evidence³ gathered to the parties (and Advisors) for review and written response within ten (10) days upon their receipt.⁴ Upon receipt of said parties' written response(s), or the date they were due if none were submitted, the Title IX Coordinator will have ten (10) days to complete and send an investigative report that fairly summarizes the relevant evidence to each party (and Advisor) for their review and written response within ten (10) days upon their receipt. Within ten (10) days of receipt, the Title IX Coordinator shall review the responses (if any) and prepare and submit the final investigative report including all relevant evidence (and including a section denoting all evidence submitted that was found by the Title IX Coordinator not to be relevant) to the Decision Maker; simultaneously, the Title IX Coordinator shall notice all parties of a hearing date that shall take place no later than ten (10) days later. Any request by a party to extend a deadline established under this Procedure shall be presented in writing to the Title IX Coordinator.

Step 2 – Hearing

The Title IX Coordinator (or designee) will be responsible for coordinating the hearing process. The Decision Maker shall be responsible for conducting the hearing. The duties of the Title IX Coordinator will include: scheduling the hearing; notifying the parties, advisors, and witnesses of the hearing; ensuring that the trained Decision Maker is provided with appropriate materials including a copy of the final investigative report and any exhibits; coordinating videoconferencing (if necessary); and securing a location for the hearing. The Title IX Coordinator will also act as liaison between the parties and the Decision Maker on procedural matters. A hearing is conducted in private. If a Respondent or Complainant has a good faith belief that the individual selected as the Decision Maker has a specific bias or conflict of interest, they may file a request with the Title IX Coordinator (or in instances where the Title IX Coordinator is serving as the Decision Maker, the request shall be directed to the individual selected as the designee in Step 1 - Investigation) for a replacement within two (2) calendar days of being noticed of the Decision Maker's identity. The Title IX Coordinator (or designee) shall review the request and make a decision in no more than three (3) calendar days either granting the request or providing reasons for denying the request. All procedural questions are subject to the final decision of the Decision Maker.

In general, hearings will proceed as follows:

- a.** The Decision Maker⁵ shall summarize the Hearing Policy and allow the Title IX Coordinator the opportunity to briefly state the allegations and summarize the investigative report.
- b.** Each party's advisor will be given the opportunity to question the other party and any witnesses by presenting questions to the Decision Maker (including questions on credibility). If the Decision Maker determines a question is relevant, the other party will be asked to respond.
- c.** The Decision Maker shall have a final opportunity to question the parties.
- d.** The Decision Maker will conclude the hearing by informing the parties that they will issue a decision to the parties and their advisors within ten (10) days, and that it will be based upon a Preponderance of the Evidence standard (i.e.; more likely than not).

³ A College cannot access or use a party's medical, psychological or similar treatment record unless it obtains the party's voluntary, written consent to do so.

⁴ All parties (and their Advisors) are strictly prohibited from disseminating any of the evidence subject to inspection and review, or from using such evidence for any purpose unrelated to the Title IX Sexual Harassment Complaint Process.

⁵ A College's Title IX Coordinator, Decision Maker, investigators and any college-chosen advisor must receive training on this Policy, issues of relevance, and how to apply the rape shield protections (*see first paragraph of Hearing Policy*) provided only for Complainants.

Hearing Policy

Questions and evidence about a Complainant's prior sexual behavior will be deemed irrelevant unless offered to prove that someone other than the Respondent committed the alleged misconduct or offered to prove consent.

If a party does not have an advisor present at the live hearing, the College will choose a trained member of the community, to conduct cross examination on behalf of that party. All advisors are limited to active participation in the question and follow-up cross-examination part of the live hearing. Further, Advisors are the only parties allowed to present questions (cross-examination or otherwise) to the Decision Maker.

Generally, live hearings may be conducted with all parties physically present in the same geographic location. At the request of either party, the College must provide for the live hearing to occur with the parties located in separate rooms with technology enabling the Decision Maker and parties to simultaneously see and hear the party or the witness answering questions.

Only relevant questions or cross-examination questions may be asked of a party or witness. Before a Complainant, Respondent, or witness answers a cross-examination or other question, the Decision-Maker must first determine whether the question is relevant and explain to the party's Advisor asking cross-examination questions any decision to exclude a question as not relevant.

Formal rules of evidence applied in courtroom proceedings (e.g., Massachusetts Evidence Code) do not apply in the hearing. The Decision Maker will make an official audio recording of the hearing. The recording is College property. No other recording of the hearing is permitted. The audio recording will be retained by the Title IX Coordinator in accordance with the College's records/information retention and disposition schedule. The College shall grant access to the recording to the parties for inspection and review. The parties are prohibited from making any copies of such recording. The recording shall only be released in compliance with applicable discovery proceedings in any future legal/administrative proceedings. The Decision Maker controls the hearing, is responsible for maintaining order during the hearing, and makes whatever rulings are necessary to ensure a fair hearing. The Decision Maker's decisions in this regard are final.

Step 3 – Review and Decision by the Decision Maker

Unless good cause for additional time is shown, the Decision-Maker must issue a written determination regarding responsibility to all parties (and their Advisors) simultaneously, within seven (7) business days of the hearing. The written determination must include — 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 College's 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 the College imposes 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 College's procedures and permissible bases for the Complainant and Respondent to appeal. The determination regarding responsibility becomes final either on the date that the College provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely. The Title IX Coordinator is responsible for effectuating any remedies including referral to appropriate College administrators as may be applicable.

Step 4 – Appeal to the President

A party who is not satisfied with the Title IX Coordinator's decision to implement an emergency removal or dismiss a Formal Complaint; or, the Decision Maker's written decision may file an appeal with the President within five (5) days of receiving said decision, respectively on the following bases: procedural irregularity that affected the outcome of the matter, newly discovered evidence that could affect the outcome of the matter, and/or that any Title IX personnel (including the Decision Maker) had a conflict of interest or bias, that affected the outcome of the matter. Where practicable, within five (5) days of receiving the appeal, the President shall issue a written decision simultaneously to all parties, accepting, rejecting or modifying the decision, describing the result of the appeal and the rationale for the result. The President's decision is final provided that any corrective action and/or discipline imposed are subject to applicable collective bargaining agreements. If the President is the Respondent, then the Chair of the College's Board of Trustees shall consider the appeal and issue the written decision.