

# Adjudication Process for Title IX Sexual Harassment Cases Against Instructional Faculty and A&P Faculty with Tenure

## 1. Introduction

- 1.1. The sections below outline the steps involved in the adjudication process for alleged violation(s) of Title IX sexual harassment within the Division of Academic Affairs, as referenced in [university policy 1346](#), Title IX Sexual Harassment, section 6.6.c. Adjudication Process for Formal Complaints against Instructional Faculty and A&P Faculty with Tenure.
- 1.2. This process begins after the Title IX Office has conducted an investigation and completed an investigative report as described in [university policy 1346](#), Title IX Sexual Harassment, section 6.4. Any statements or information collected by other offices will be delivered to the Title IX Office during the collection and investigation phase.

## 2. Formal Adjudication Process

- 2.1. The process for handling a formal complaint of Title IX sexual harassment alleged against a faculty member will be a hearing conducted by a trained hearing board.
- 2.2. Review by a Hearing Board
  - 2.2.1. Upon receipt of the final investigative report from the Title IX Coordinator concerning a violation of university policy 1346 by an instructional or tenured A&P faculty member, the Title IX Officer for Faculty will set a date for a hearing based on the availability of the complainant, respondent, hearing board members, and administrative witness(es); assemble a hearing board; and refer the case to that hearing board. The hearing board will normally convene to hear a case within 15 business days after the case has been referred for a hearing. This timeframe will be extended for good cause shown by a party for an extension. Hearings may last from a few hours to several days, depending on the nature of the circumstances, number of witnesses, and extent of cross-examination.
  - 2.2.2. The Title IX Officer for Faculty will select three individuals to hear the case and one alternate from the pool of trained hearing board members who are not members of the college of either the respondent or complainant. The complainant and respondent will be simultaneously notified of the members of the hearing board and the alternate. Either party may request in writing within two business days to the Title IX Officer for Faculty the removal of any member for conflict of interest or bias. The decision on removal rests with the Title IX Officer for Faculty.
    - 2.2.2.1. The alternate will review all evidence made available to the hearing board, will be present for the hearing, and will be called upon to take the place of a hearing board member in the event that one is unable to continue as a member for family, medical, or other unforeseen circumstances. All members of the hearing board, including the alternate, are required to be present during all testimony. The alternate will be excused from the board prior to the deliberation phase.
  - 2.2.3. The Title IX Officer for Faculty will name the chair of the hearing board who will run the hearing. The chair will convene the hearing; explain the procedures to the complainant, respondent, advisers, and any witnesses; receive all evidence presented during the hearing; determine whether a witness called by either party is appropriate and will be heard; determine relevance of questions during cross-

examination; ensure procedures are followed; maintain the recording of the proceedings; coordinate the drafting of the report containing the decision, rationale and, if applicable, any remedies and sanctions of the hearing board; and deliver the report to the Title IX Officer for Faculty.

- 2.2.4. In the hearing, neither party is required to be present. If a party is not present for live cross-examination, the evidence gathered from that party can be used in the decision-making process.
  - 2.2.4.1. Neither the complainant nor the respondent shall be allowed to cross-examine the other party directly; cross-examination occurs through the parties' advisers only.
- 2.2.5. Hearings may be conducted in-person or virtually, depending on factors such as the availability of participants or the need for continued physical distancing. The determination of mode of delivery for the hearings will be determined by the Title IX Officer for Faculty. When hearings are scheduled in-person, either party may opt to participate virtually in the hearing. Such remote access must be requested at least two business days in advance of the hearing to allow the Title IX Officer for Faculty to make appropriate arrangements for technology. All hearings, whether in-person or remote, must have video and audio capabilities for all participants.
- 2.2.6. The hearing will be closed to all but the parties, each party's adviser, the hearing board's members, and witnesses. Witnesses will only attend the portion of the hearing in which they testify and will not be present for other witnesses' testimony.
- 2.2.7. Prior to the hearing, both the complainant and respondent will have had timely access to documents and information considered by the hearing board. During the hearing, equal opportunity shall be given to the complainant and the respondent to present opening and closing statements, testimony, witnesses, and evidence.
- 2.2.8. Both parties may have access to an adviser of their choice who may be present with the party at any meetings or proceedings related to the formal complaint. Either party may choose to have an attorney present as the adviser during the hearing. If either party does not have an adviser, an adviser, trained in Title IX proceedings, will be provided by the university for the purpose of cross-examination. The name of the adviser will be given to the party at least five business days prior to the hearing when possible. If either party needs an adviser provided for them, they must notify the Title IX Officer for Faculty in writing at least five business days prior to the hearing.
- 2.2.9. With the exception of cross-examination, the hearing board will communicate with the parties directly, not through the adviser. With the exception of cross-examination, the adviser may not address the hearing board directly or on behalf of the party.
  - 2.2.9.1. During cross-examination, the advisers ask questions for response by the other party, administrative witnesses, or other party's witnesses. The Hearing Chair will determine relevancy of each question; if the question is deemed relevant, the party will be allowed to respond. If the question is deemed not relevant, rationale for that decision will be provided.
  - 2.2.9.2. Cross-examination must be done in a manner that:
    - Probes a party's narrative in order to give the decision maker the fullest view possible of the evidence relevant to the allegations at issue.

- Is expected to be respectful and avoid unnecessary use of inflammatory language or commentary
  - Is not intended to embarrass, blame, humiliate, or emotionally berate a party.
  - Is not duplicative.
- 2.2.10. Each party is responsible for requesting any witnesses to be present to testify on behalf of that party. Failure of a witness to appear as requested by a party is not grounds for postponement of the hearing. The hearing board may allow virtual testimony during the hearing. If a witness is not present for live cross-examination, the evidence gathered from that party can be used in the decision-making process. Whether or not to allow the testimony of any witnesses is to be determined by the hearing board chair on a case-by-case basis. Either party intending to call witnesses shall notify the Title IX Officer for Faculty in writing at least two business days in advance of the hearing by giving the name and title of each witness and the subject matter of the testimony of each witness. The hearing board may call additional witnesses, as it deems appropriate.
- 2.2.11. In the hearing, information concerning the complainant's or respondent's sexual predisposition is never allowed, nor are questions about the complainant's or respondent's sexual history permitted, unless the question or evidence is used to prove that someone other than the respondent committed the alleged sexual harassment, or the question or evidence concerns sexual behavior between the complainant and the respondent and is offered to prove consent.
- 2.2.12. All testimony given before the hearing board will be audio-recorded. At the conclusion of the hearing, this recording will be placed on file in the Office of the Title IX Officer for Faculty. Upon request, copies of the recording will be made available for review by either party.
- 2.2.13. All persons performing responsibilities under this policy will respect and maintain the strict confidentiality of all relevant documents and deliberations. The privacy of all parties involved will be protected by the university within the context of all state and federal laws, and university policies, and the First Amendment rights of all parties will not be restricted.
- 2.2.14. The evidentiary standard for hearings is preponderance of the evidence. The respondent is presumed to be not responsible unless sufficient evidence is presented to prove a violation of the policy has occurred.
- 2.2.15. The deliberations of the hearing board will not be recorded, and the hearing board members shall keep the deliberations confidential. The decision of the hearing board shall be by majority vote, but the vote of individual members and the number of votes for each side shall not be reported, and no minority or dissenting report will be issued.
- 2.2.16. Only if the hearing board finds that the respondent has violated the policy will the board consider potential remedies and sanctions against the respondent.
- 2.2.17. The hearing board has three business days after the hearing to deliver its decision and rationale for responsibility, and, if appropriate, its decision and rationale for remedies and sanctions, to the Title IX Officer for Faculty.
- 2.2.18. The Title IX Officer for Faculty will share the report of the hearing board with the complainant, respondent, and Title IX office within two business days of receipt of the decision from the hearing board. This written notification includes the outcome

of the process, including whether the respondent was found responsible for violating the policy, rationale, any remedies, any sanctions, any appeal procedures, and the date the decision becomes final.

### **3. Appeal**

- 3.1. The appeal option below applies for outcomes decided by a hearing board.
  - 3.1.1. Upon receipt of the decision of the hearing board, both the complainant and respondent have five business days to submit an appeal in writing to the Title IX Officer for Faculty.
  - 3.1.2. If no appeals are submitted, the process ends, and the hearing board's decision is final. The decision becomes final the next calendar day after the appeal deadline. The Title IX Officer for Faculty notifies the complainant, respondent and Title IX office within three business days of the appeal deadline. In addition, if the respondent is found responsible, the Provost, the respondent's dean and Human Resources are notified of the decision of responsible and, if applicable, of the remedies and sanctions. If remedies or sanctions are imposed, the AUH/supervisor is also notified.
  - 3.1.3. If a written appeal is submitted by either party, it must provide the grounds for the appeal and a summary of the arguments and any new documentary evidence the party wishes the appeal committee to review. This submission must include the entirety of the appeal.
  - 3.1.4. An appeal may only be granted under one or more of the following grounds:
    - (A) procedural irregularity that affected the outcome of the matter;
    - (B) new 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, and
    - (C) The Title IX Coordinator, investigator(s) or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.
  - 3.1.5. The Title IX Officer for Faculty must notify the other party in writing that an appeal has been filed within one business day of receipt of the appeal.
  - 3.1.6. The Title IX Officer for Faculty determines if the appeal is based on one or more of the permissible grounds for appeal within two business days of receiving the appeal. If the appeal is not based on permissible grounds for an appeal, the process ends, and the initial decision of the hearing board is final and reported to the parties listed above. If the appeal is authorized, the appeal process is initiated.
  - 3.1.7. The Title IX Officer for Faculty will share the authorized appeal of one party with the other party at the end of the above two-day period.
  - 3.1.8. If either or both parties appeal, the other party has five business days to respond to the appeal. Neither may file an additional appeal at this point but may only respond to the appeal received.
- 3.2. Appeal Review Process
  - 3.2.1. Upon determining that the case meets the criteria for appeal, the Title IX Officer for Faculty coordinates and schedules the appeal review within 10 business days.

### 3.2.2. Review by an Appeal Board

- 3.2.2.1. The Title IX Officer for Faculty will assign a three member Appeal Board.
- 3.2.2.2. The Appeal Board will consist of one Academic Affairs dean and two associate deans.
- 3.2.2.3. The dean and associate deans assigned will be individuals selected from a pool of trained Title IX members; the dean and associate deans will be members of colleges outside the complainant's and respondent's discipline or supervision.
- 3.2.2.4. The complainant and respondent will be simultaneously notified in writing of the dean and associate deans assigned to the appeal. Either party may object in writing to an assignment of dean or associate dean on the basis of conflict of interest or bias and may request that the Title IX Officer for Faculty assign a replacement. The decision on reassignment rests with the Title IX Officer for Faculty.

### 3.2.3. Review by an Appeal Board

- 3.2.3.1. Appeal Board members will have full access in advance to all appeal documents submitted; the case file, including the decision of the hearing board; and any recordings.
- 3.2.3.2. The Appeal Board will meet to thoroughly review the appeal documents. Upon review of all documents and recordings, the Appeal Board will elect one of three pathways to proceed:
  - The decision is made to deny the appeal. The Appeal Board submits the decision with rationale to the Title IX Officer for Faculty within three business days of the Appeal Board's meeting.
  - The decision is made, based on the nature of the appeal, to make a determination based on the information provided in the written appeal, previously-submitted documentation, and hearing recordings without the need for additional cross-examination. The Appeal Board submits the outcome of their review with rationale to the Title IX Officer for Faculty within three business days of the Appeal Board's meeting.
  - The decision is made to gather additional information through a second hearing process in order to come to a conclusion on the appeal. The Appeal Board submits a request to postpone their final decision until a hearing can be scheduled. The Appeal Board will hear the case.
- 3.2.3.3. If a second hearing is requested by the Appeal Board, the Appeal Board will indicate if they will hear all information again or if the hearing will be limited solely to the new information received. This decision will be based on the nature of the appeal and the type of information received for the appeal.
- 3.2.3.4. If a second hearing is requested, the hearing will proceed according to hearing processes listed in section 2.2. The second hearing will be conducted within 15 business days of the request to hold a second hearing.

3.2.3.5. Upon completion of the appeal hearing, the Appeal Board has three business days after the hearing to deliver its decision and rationale to either uphold or alter the original decision, and, if appropriate, its decision and rationale for remedies and sanctions, to the Title IX Officer for Faculty.

3.3. Final Decision: Reporting and Monitoring

3.3.1. Once the final decision is reached, the Title IX officer for Faculty will notify the complainant, respondent, and the Title IX Office within one business day of receipt of the final decision. If the respondent is found responsible, the Provost, the respondent's dean and Human Resources are notified of the decision of responsible and, if applicable, of the remedies and sanctions. If remedies or sanctions have been rendered, the respondent's AUH/supervisor will also be notified.

3.3.2. Once the appeal decision has been reported by the Appeal Board to the Title IX Officer for Faculty, the decision is final. No additional appeals will be accepted.

3.3.3. During the period of any assigned remedies or sanctions, the AUH/supervisor will monitor, on a regular basis, the progress of the assigned remedies or sanctions to ensure sanctions are upheld.

**4. Informal Resolution**

4.1. After a formal complaint has been filed, the complainant and respondent may agree to enter an informal resolution process that does not involve a full investigation and adjudication process. The informal resolution process may be initiated at any time prior to reaching a determination regarding responsibility.

4.1.1. The informal resolution process is purely voluntary, requires written consent, and cannot be required. Both parties must agree to an informal resolution process.

4.1.2. Cases in which an employee is alleged to have sexually harassed a student are not eligible for an informal resolution process.

4.2. Either party may withdraw from informal resolution at any time prior to agreeing to a resolution and initiate or resume the formal grievance process.

4.3. The informal resolution process is a method of resolving sexual harassment allegations in a less adversarial manner than the investigation and adjudication process of a formal grievance process. In the informal resolution process, witnesses may be contacted but are not called to formally testify before a board, nor does live cross-examination occur.

4.4. Informal resolutions are conducted by a dean from Academic Affairs. The dean is selected by the Title IX Officer for Faculty from a pool of trained individuals. The dean assigned to the case will typically not be the dean from either the complainant's or respondent's college. Both parties will be allowed to express concerns of bias and request that the Title IX Officer for Faculty assign a different dean. The final decision to replace the assigned dean lies with the Title IX Officer for Faculty.

4.4.1. There may be unique situations in which an outside mediator is necessary. The Title IX Officer for Faculty reserves the right to bring in a trained mediator to work with the case.

4.5. The dean works with both the complainant and the respondent. The initial meeting of the dean with the complainant and the respondent will take place separately. For subsequent meetings, the parties may or may not be in the same room or virtual session(s) at the same time, depending on the circumstances, comfort, and preferences of both parties.

- 4.5.1. The exact structure of the informal process may take on various forms, the format of which will be decided by the dean after speaking to the complainant and respondent in their initial individual meetings. Variables that will determine the type of informal resolution may include but are not limited to the following:
  - Goals of each party regarding resolution
  - Type of scenario the case involves
  - Current relationship or tenor between the two parties
  - Status regarding acceptance of responsibility or acknowledgement of wrongdoing or harm caused as a result of the respondent's actions.
- 4.5.2. The potential informal process may include:
  - Formal grievance process minus the live witness testimony, live cross-examination or cross-examination by anyone other than the dean hearing the case.
  - Mediation
  - Arbitration
  - Restorative practice
  - Combination of any of the above
- 4.6. The complainant and respondent may be asked to provide names of witnesses and the type of information each witness would provide.
- 4.7. The dean decides if witnesses will be contacted according to relevancy of the information they may provide.
  - 4.7.1. If witnesses are contacted, the dean will contact each witness to speak directly with the witness.
- 4.8. No cross-examination occurs between parties or between the parties and witnesses; the dean is the only person to ask parties or witnesses for clarifying information.
- 4.9. The informal process must be completed within 15 business days of the decision to enter an informal process unless both parties and the dean agree to an extension.
  - 4.9.1. If the parties cannot come to a mutually agreed upon resolution within the 15 business day timeframe, without coercion or undue pressure, and without approval of extension, the case will be returned to a formal resolution process.
- 4.10. Once an agreement has been reached and the dean approves, both parties will sign an agreement abiding by the outcome and, if applicable, the remedies and sanctions reached in the process.
  - 4.10.1. Informal resolution may result in disciplinary actions, remedies, or sanctions up to and including termination of employment.
- 4.11. Once the agreement is signed by both parties, the decision is final; the decision cannot be appealed nor can parties request a formal hearing after that point.
- 4.12. The final, signed agreement will be submitted to the Title IX Officer for Faculty no later than three business days after the resolution has been reached.
- 4.13. The Title IX Officer for Faculty will provide the report to the Title IX Office within three business days of receipt of the report. If remedies and sanctions are rendered, the outcome of the resolution will also be reported to Human Resources and the respondent's AUH or direct supervisor.