

Adjudication Process for Classified, Wage Employees, A&P Faculty without Tenure and Affiliates

Title IX Sexual Harassment Cases

1. Introduction

- 1.1. The sections below outline the steps involved in the adjudication process for alleged violation(s) Title IX sexual harassment, as referenced in university policy 1346 Title IX Sexual Harassment, section 6.6.2 Adjudication Process for Formal Complaints against Classified and Wage Employees, A&P Faculty without Tenure and Affiliates.
- 1.2. This process begins after the Title IX Office has conducted an investigation and completed an investigative report. 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 for Classified, Wage Employees, A&P Faculty without Tenure and Affiliates

- 2.1. The process for adjudicating a formal complaint of Title IX sexual harassment against a classified or wage employee, A&P faculty member without tenure, or affiliate will be through a hearing conducted by a trained hearing board.
- 2.2. Review by a Hearing Board
 - ◆ Upon receipt of the final investigative report from the Title IX Coordinator concerning a violation of Policy 1346, the Title IX Officer for Staff will set a date for a hearing based on the availability of the complainant, respondent, hearing board members, and 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 extend from a few hours to several days, depending on the nature of the circumstances, number of witnesses, and extent of cross-examination.
 - ◆ The Title IX Officer for Staff will select three individuals to hear the case and one alternate from the pool of trained hearing board members. 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 Staff the removal of any member for conflict of interest or bias. The decision on removal and replacement rests with the Title IX Officer for Staff.
 - 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.
 - ◆ The Title IX Officer for Staff 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, advisors, 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 Staff.
- ◆ In the hearing, neither party is required to be present; however, if a party is not present for live cross-examination, the evidence gathered from that party cannot be used in the decision-making process.
 - Neither the complainant nor the respondent shall be allowed to cross-examine the other party directly; cross examination occurs through the parties' advisors only.
 - ◆ 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 Staff. 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 Staff to make appropriate arrangements for technology. All hearings, whether in-person or remote, must have video and audio capabilities for all participants.
 - ◆ The hearing will be closed to all but the parties, each party's advisor, 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.
 - ◆ 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.
 - ◆ Both parties may have access to an advisor 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 advisor during the hearing. If either party does not have an advisor, an advisor will be provided for the purpose of cross-examination. The advisor will be trained in Title IX proceedings. The name of the advisor will be given to the party at least five business days prior to the hearing when possible. If either party needs an advisor provided for them, they must notify the Title IX Officer for Staff in writing at least five business days prior to the hearing.
 - ◆ Participation of the advisor is restricted to cross-examination only. With the exception of cross-examination, the hearing board will communicate with the parties directly, not through the advisor, and with the exception of cross-examination, the advisor may not address the hearing board directly or on behalf of the party.
 - During cross-examination, the advisors 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.
 - 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 not intended to embarrass, blame, humiliate, or emotionally berate a party.
 - Is not duplicative.
- ◆ Each party is responsible for requesting any witnesses to be present to testify on behalf of that party. Whether or not to allow the testimony of any witness is to be determined by the hearing board chair on a case-by-case basis. 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 available for cross-examination, the testimony cannot be used in the decision-making process. Either party intending to call witnesses shall notify the Title IX Officer for Staff 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.
- ◆ 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.
- ◆ 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 Staff. Upon request, copies of the recording will be made available for review by either party.
- ◆ 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.
- ◆ 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.
- ◆ 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.
- ◆ Only if the hearing board finds that the respondent has violated the policy will the board consider potential sanctions against the respondent.
- ◆ The hearing board has three business days after the hearing to deliver its written decision and rationale for responsibility, and, if appropriate, its decision and rationale for sanctions, to the Title IX Officer for Staff.
- ◆ The Title IX Officer for Staff 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 sanctions, any remedies, 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.

- ◆ 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 Staff.
- ◆ 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 Staff notifies the complainant, respondent and Title IX office within three business days of the final decision date of the final outcome of the formal complaint. In addition, if the respondent is found responsible, the Vice President, the respondent's AVP, Director and Human Resources are notified of the decision of responsible and, if applicable, of the sanctions. If sanctions are imposed, the director/supervisor is also notified.
- ◆ 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 documentary evidence the party wishes the Appeal committee to review. This submission must include the entirety of the appeal.
- ◆ An appeal may only be granted on 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.
- ◆ The Title IX Officer for Staff must notify the other party in writing that an appeal has been filed within one business day.
- ◆ Title IX Officer for Staff determines if the appeal is based on one or more of the permissible grounds for appeal within two business days. If the appeal is not based on permissible grounds, 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.
- ◆ The Title IX Officer for Staff will share the appeal of one party with the other party at the end of the two-day period.
- ◆ 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

- ◆ Upon determining that the case meets the criteria for appeal, the Title IX Officer for Staff coordinates and schedules the appeal review within 10 business days.
- ◆ Review by an Appeal Board
 - The Title IX Officer for Staff will assign a three-member Appeal Board from a pool of trained Administrative and Professional (A&P) and classified staff.

- The Appeal Board assigned will consist of individuals selected from a pool of trained Title IX members; will be members of departments outside the complainant's and respondent's Unit, department, or supervision.
- The complainant and respondent will be simultaneously notified in writing of the Appeal Board members assigned to the appeal. Either party may object, in writing, to an appeal board member on the basis of conflict of interest or bias. The decision on reassignment rests with the Title IX Officer for Staff.
- ♦ Review by an Appeal Board
 - 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.
 - 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 Staff 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 Staff 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.
 - 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.
 - If a second hearing is requested, the hearing will proceed according to the hearing process listed in section 2.2. The second hearing will be conducted within 15 business days of the request to hold a second hearing.
 - 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 sanctions and remedies, to the Title IX Officer for Staff.

3.3. Final Decision: Reporting and Monitoring

- ♦ Once the final decision is reached, the Title IX Officer for Staff will notify the complainant, respondent and the Title IX office within one business days of receipt of the final decision. If the respondent is found responsible, the VP, the respondent's AVP, Director, and Human Resources are notified of the decision of responsible and, if applicable, of the sanctions. If sanctions have been rendered, the respondent's AUH/supervisor will also be notified.

- ◆ Once the appeal decision has been reported by the Appeal Board to the Title IX Officer for Staff, the decision is final. No additional appeals will be accepted.
- ◆ During the period of any assigned sanctions, the director or supervisor will monitor, on a regular basis, the progress of the assigned 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, requiring 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 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 trained A&P or classified staff member from a unit/department different than either the complainant's or the respondent's home unit/department. The designated A&P or classified staff member is selected by the Title IX Officer for Staff from a pool of trained individuals. The designated A&P or classified staff member assigned to the case will typically not be the designated A&P or classified staff member from either the complainant's or respondent's unit. Both parties will be allowed to express concerns of bias and request assignment of a different designated A&P or classified staff member. The final decision to replace the assigned designated A&P or classified staff member lies with the Title IX Officer for Staff.

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

4.5 The designated A&P or classified staff member works with both the complainant and the respondent. The initial meeting of the designated A&P or classified staff member 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 at the same time, depending on the circumstances and 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 designated A&P or classified staff member after speaking to the complainant and respondent in an initial meeting. 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 designated A&P or classified staff member 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 designated A&P or classified staff member decides if witnesses will be contacted according to relevancy of the information they may provide.
- 4.7.1 If witnesses are contacted, the designated A&P or classified staff member 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 designated A&P or classified staff member 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 designated A&P or classified staff member agrees 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 designated A&P or classified staff member approves, both parties will sign an agreement, agreeing to the outcome and, if applicable, the remedies and sanctions reached in the process.
- 4.10.1 Informal resolution may result in disciplinary actions or sanctions.
- 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 Staff no later than three business days after the resolution has been reached.
- 4.13 The Title IX Officer for Staff will provide the report to the Title IX Office within three business day 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 Director or direct supervisor.