

Human Resources Adjudication Procedures for Formal Complaints of Sexual Misconduct or Title IX Sexual Harassment

1. Introduction

- 1.1. The sections below outline the steps involved in the adjudication process for alleged violations of Policy 1346 (Title IX Sexual Harassment) or Policy 1340 (Sexual Misconduct) by university employees and affiliates, except A&P, instructional, and adjunct faculty in Academic Affairs.
- 1.2. In cases where both Policy 1346 and Policy 1340 apply for different conduct arising out of the same incident or pattern of incidents, the university may adjudicate all allegations simultaneously under each policy. Alternatively, the university may choose to adjudicate the conduct separately under each policy.

Formal complaints alleging (1) sexual harassment under Policy 1340 on the basis of hostile environment conduct that is sufficiently severe, persistent, or pervasive, and objectively offensive in a manner that interferes with, limits, or denies the person the ability to participate in or benefit from the institution's education programs or activities and (2) sexual harassment under Policy 1346 on the basis of unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the university's education program or activity, may be adjudicated simultaneously under both policies. If the university consolidates adjudication under both policies, the decision-maker will make a decision on the allegations under both Policy 1340 and Policy 1346, providing a written rationale for allegations under each policy. Alternatively, the university may choose to adjudicate the conduct separately under each policy.

- 1.3. The adjudication process begins after the Title IX Office has conducted an investigation and completed an investigative report as described in Policies 1346 and 1340 and procedures specified on the Title IX Office website.

2. Policy 1346 Adjudication Process

- 2.1. The process for handling a formal complaint of Title IX sexual harassment alleged against an employee or affiliate will be a live hearing conducted by a

trained hearing panel. At the discretion of the Title IX Office, hearing panel members, including the hearing panel chair, may be trained professionals external to the university.

- 2.2. The Title IX Officer or designee will begin selection of the hearing panel and scheduling the hearing within five business days of receipt of the final investigative report from the Title IX Office.
- 2.3. Anticipated timelines, deadlines, restrictions, or procedures listed here will not be altered except when good cause is provided by any party, as determined by the Title IX Officer; or in unexpected and unavoidable circumstances in order to uphold the intent of the process, as determined by the Title IX Officer; or with the agreement of the parties, as approved by the Title IX Officer. Good cause may include but is not limited to the absence of a party or a witness, or the need for language assistance or accommodation of disability.

Complainants and respondents may request extensions for good cause under these procedures. The determination regarding whether an extension will be granted rests with the Title IX Officer. If a delay or extension is granted at the request of a party and that impacts another party, the Title IX Officer will communicate the reason(s) in writing for the extension to all parties and advisors of choice.

2.4. Selection of the Hearing Panel and Scheduling the Hearing

- 2.4.1. The Title IX Officer or designee will set a date for a hearing based on the availability of the complainant(s), respondent(s), advisors of choice, hearing panel members, and witnesses; assemble a hearing panel; and refer the case to that hearing panel.
- 2.4.2. Parties are not required to be present for the hearing.
- 2.4.3. The hearing panel will generally convene to hear a case within 20 business days after the case has been referred to the Title IX Officer for a hearing.
- 2.4.4. Hearings may last from a few hours to several days, depending on the nature of the circumstances, number of witnesses, and the extent of cross-examination.
- 2.4.5. The Title IX Officer will select three individuals to hear the case and one alternate from a pool of trained hearing panel members who are not

members of the department or unit of either the respondent(s) or complainant(s) and who are not the Title IX Coordinator or the investigator. Hearing panel members will be trained to serve impartially without prejudging the facts at issue and will be free from conflicts of interest and bias.

2.4.5.1. The alternate will review all evidence made available to the hearing panel, will be present for the hearing, and will be called upon to take the place of a hearing panel 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 panel, including the alternate, are required to be present during all testimony. The alternate will be excused from the panel prior to the deliberation phase.

2.4.6. The complainant(s), respondent(s), and advisors of choice will be simultaneously notified of the members of the hearing panel and the alternate. Within two business days of this notification, any party may request in writing to the Title IX Officer the removal of any member for conflict of interest or bias. The decision on removal rests with the Title IX Officer.

2.4.7. The Title IX Officer will name the chair of the hearing panel who will run the hearing. The chair will convene the hearing; explain the procedures to the complainant(s), respondent(s), advisors of choice, and any witnesses; receive all evidence presented during the hearing; determine whether a witness called by any 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 panel; and deliver the report to the Title IX Officer.

2.5. Advisors of Choice

2.5.1.1. Any party may select an advisor of their choice who may be present with the party at any meetings or proceedings related to the formal complaint. Any party may choose, but is not required, to have an attorney serve as their advisor.

2.5.1.2. If any party does not have an advisor, an advisor trained in Title IX

procedures will be provided by the university for the purpose of cross-examination. The advisor will be assigned to the party prior to the scheduling of the hearing.

2.6. Witnesses

- 2.6.1. All parties are responsible for requesting any witnesses to be present to testify on behalf of that party. Any party intending to call witnesses shall notify the Title IX Officer in writing as soon as possible and no later than three 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 panel may call additional witnesses, as it deems appropriate.

2.7. Hearings

- 2.7.1. Hearings may be conducted in-person or virtually, depending on factors such as the availability or accessibility needs of participants. The mode of delivery for the hearings will be determined by the Title IX Officer. When hearings are scheduled in-person, any party may opt to participate virtually in the hearing. Such remote access must be requested at least three business days in advance of the hearing to allow the Title IX Officer to make appropriate arrangements for technology. All hearings, whether in-person or remote, must have video and audio capabilities for all participants.
- 2.7.2. The hearing will be closed to all but the parties, each party's advisor of choice, witnesses, the hearing panel members, and an administrative/technical support person. Witnesses will only attend the portion of the hearing in which they testify and will not be present for other witnesses' testimony.
- 2.7.3. Prior to the hearing, the complainant(s) and respondent(s) will have had timely access to documents and information considered by the hearing panel. During the hearing, equal opportunity shall be given to the complainant(s) and the respondent(s) to present opening and closing statements, testimony, witnesses, and evidence.
- 2.7.4. In the hearing, no 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.

2.7.5. During cross-examination, the parties' advisors of choice ask questions for response by the other party(ies), administrative witnesses, or other party(ies)'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.

2.7.5.1. Neither the complainant(s) nor the respondent(s) shall be allowed to cross-examine the other party(ies) directly; cross-examination occurs through the parties' advisors of choice only.

2.7.5.2. 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 respectful and avoids unnecessary use of inflammatory language or commentary;
- Is not intended to embarrass, blame, humiliate, or emotionally berate a party; and
- Is not duplicative.

2.7.5.3. With the exception of cross-examination, the hearing panel will communicate with the parties directly, not through the advisor of choice. With the exception of cross-examination, the advisor of choice may not address the hearing panel directly or on behalf of the party.

2.7.6. Failure of a witness to appear as requested by a party is not grounds for postponement of the hearing. The hearing panel 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.

2.7.7. A party or witness may choose not to answer questions or provide information to be used in the case. The hearing panel may not draw an inference about the determination regarding responsibility based solely on a party or witness's absence or refusal to answer cross-examination or other questions.

2.7.8. In the hearing, questions or evidence concerning a complainant's sexual predisposition or sexual history will be deemed irrelevant,

unless the question or evidence is offered to prove that someone other than the respondent committed the alleged sexual harassment, or the question or evidence concerns specific incidents of the complainant's prior sexual behavior with respect to the respondent and is offered to prove consent.

2.7.9. In the hearing, questions or evidence concerning a respondent's sexual predisposition or sexual history will be deemed irrelevant, unless the question or evidence pertains to a pattern of conduct by the respondent that is substantially similar to the present allegation. Evidence of a pattern of substantially similar conduct by the respondent that is collected during the investigation will be included in the investigative report prepared by the Title IX Office.

2.7.10. In the hearing, all information that is protected by a legally recognized privilege will not be required, used, relied on, or sought, unless the person holding such privilege has expressly and intentionally waived the privilege by providing voluntary written consent. This includes, but is not limited to, attorney-client communications, clergy-confessor statements, and records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional or paraprofessional's capacity, or assisting in that capacity, and which are made or maintained in connection with the provision of treatment to a party.

2.7.11. All testimony given before the hearing panel will be audio-recorded. At the conclusion of the hearing, the Title IX Officer will provide this recording to the hearing panel. Upon request, copies of the recording will be made available for review by any party.

2.7.12. Hearing panel members will respect and maintain the confidentiality and privacy of all relevant documents and deliberations under these procedures within the context of all state and federal laws and university policies. The First Amendment rights of the parties will not be restricted.

2.8. Deliberations of the Hearing Panel

2.8.1. The deliberations of the hearing panel will not be recorded, and the hearing panel members shall keep the deliberations confidential. The decision of the hearing panel 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.

- 2.8.2. The evidentiary standard for adjudication is preponderance of the evidence. The hearing panel will objectively evaluate all relevant evidence both inculpatory and exculpatory and reach a determination regarding responsibility by applying the preponderance of the evidence standard. The respondent is presumed not responsible until the conclusion of the grievance process and unless sufficient evidence is presented to prove a violation of the policy has occurred. The hearing panel will ensure that rules voluntarily adopted by the university treat the parties equally.
- 2.8.3. The hearing panel will treat complainants and respondents equitably by recognizing the need for complainants to receive remedies where a respondent is determined responsible for a policy violation and for respondents to face disciplinary sanctions only after a fair process determines responsibility. Only if the hearing panel finds that the respondent has violated the policy will the panel consider potential remedies and sanctions.
- 2.8.4. The timeframe for deliberations of the hearing panel begins at the conclusion of the hearing. The hearing panel has 15 business days after the hearing to deliver its decision and rationale, and, if appropriate, remedies and sanctions, to the Title IX Officer.
- 2.8.5. The Title IX Officer will share the report of the hearing panel simultaneously with the complainant(s), respondent(s), and advisors of choice within two business days of receipt from the hearing panel. This report includes the outcome of the process (including whether a respondent was found responsible for violating the policy), the rationale, and any remedies and sanctions applied, in accordance with applicable disclosure laws. The written notification also includes any appeal procedures and the date the decision becomes final.

2.9. Appeal

- 2.9.1. Upon receipt of the decision of the hearing panel, the complainant(s) and respondent(s) have five business days to submit an appeal in writing to the Title IX Officer.
- 2.9.2. If a written appeal is submitted by any 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.

- 2.9.3. 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 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 an individual complainant or respondent that affected the outcome of the matter.
- 2.9.4. The Title IX Officer must notify the other party(ies) and their advisors of choice in writing that an appeal has been filed within two business days of receipt of the appeal.
- 2.9.5. The Title IX Officer determines if the appeal is based on one or more of the permissible grounds for appeal within three 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 panel is final and the Title IX Officer will notify the complainant(s), respondent(s), advisors of choice, and the Title IX Office. If the appeal is authorized, the appeal process is initiated.
 - 2.9.5.1. If an appeal is made on the grounds of new evidence that was not reasonably available that could affect the outcome of the matter, sections 2.7.8 to 2.7.10 will apply in determining permissible evidence.
- 2.9.6. If the appeal process is authorized, the Title IX Officer will share the full content of the authorized appeal of a party with the other party(ies) and their advisors of choice at the end of the above three-day period.
- 2.9.7. If an appeal process is authorized, the other party(ies) will have five business days to respond to the appeal. No party may file an additional appeal at this point but may only respond to the appeal received.
- 2.9.8. Within two business days of determining that the case meets the criteria for appeal, the Title IX Officer will assign a vice president to hear any authorized appeals simultaneously. The vice president assigned to make

a determination on the appeal will generally correspond to the respondent(s)'s department or unit and will be trained in Title IX procedures.

2.9.9. Upon selection of the vice president, the Title IX Officer will notify the complainant(s), respondent(s), and advisors of choice simultaneously of the vice president assigned to the appeal. Within two business days, any party may object in writing to the assignment of the vice president on the basis of conflict of interest or bias and may request that the Title IX Officer assign a replacement. The decision to replace the vice president rests with the Title IX Officer. If the vice president is removed, the Title IX Officer will proceed with selection of a replacement according to the procedures in this section.

2.9.10. Upon final selection of the vice president for the appeal, the Title IX Officer will provide the vice president with full access to all appeal documents submitted; the case file, including the decision of the hearing panel; and any recordings.

2.9.11. Appeal Review

2.9.11.1. The vice president for the appeal will thoroughly review the appeal documents and elect one of three pathways to proceed for each appeal:

- The decision is made to deny the appeal. The vice president submits the decision with rationale to the Title IX Officer within five business days of receipt of the appeal material.
- 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 vice president submits the outcome of their review with rationale to the Title IX Officer within five business days of receipt of the appeal materials.
- The decision is made to gather additional information through an appeal hearing process, and whether the appeal hearing will include hearing all information again

or solely the new information received. The decision will be based on the nature of the appeal and the type of information received for the appeal. The vice president submits a request for an appeal hearing to the Title IX Officer within five business days of receipt of the appeal materials. An appeal panel will hear the case.

2.9.12. Appeal Hearings

2.9.12.1. If an appeal hearing is requested, the process for selecting appeal panel members and conducting the appeal hearing will generally follow the procedures in sections 2.2 to 2.6.

2.9.12.2. Upon completion of the appeal hearing, the appeal panel has five business days 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.

2.10. Final Decision: Notifications and Monitoring

2.10.1. If no appeals are submitted by a complainant or respondent within five business days of receipt of the hearing panel decision, the process ends, and the hearing panel's decision is final. The decision becomes final the next calendar day after the appeal deadline. Within one business day after the decision becomes final, the Title IX Officer simultaneously notifies the complainant(s), respondent(s), and advisors of choice that the decision is final. Respondents who are classified employees may appeal the university's final decision through the Department of Human Resources Management for Virginia.

2.10.2. Within one business day of the decision becoming final, the Title IX Officer notifies the Title IX Office and the respondent's supervisor and vice president of the final decision and any remedies or sanctions in accordance with applicable disclosure laws.

2.10.3. In cases that are appealed, the decision of the appeal panel is final once the appeal decision has been reported by the appeal panel to the Title IX Officer. No additional appeals will be accepted.

2.10.3.1. Once the final decision of the appeal panel is reached, the Title IX Officer will, within two business days of receipt,

simultaneously notify the complainant(s), respondent(s) and advisors of choice of the final decision. Additional notifications will be made according to Section 2.10.2.

2.10.4. During the period of any assigned remedies or sanctions, the respondent's supervisor will monitor the progress of the assigned remedies or sanctions to ensure they are upheld.

3. Policy 1340 Adjudication Process

3.1. Adjudication for formal complaints of Policy 1340 sexual misconduct alleged against an employee respondent will generally follow the procedures outlined in Section 2.

3.2. Adjudication for formal complaints of Policy 1340 sexual misconduct alleged against an affiliate respondent will generally follow the procedures in Section 3.3.

3.3. Upon receipt of the final investigative report from the Title IX Office concerning an alleged violation of Policy 1340 by an affiliate, a Title IX Officer or designee will share the investigative report with the head of the university department (director level or above) sponsoring the affiliate. Within 10 business days of receipt of the investigative report, the head of the sponsoring department will determine, based on a preponderance of the evidence, if a policy violation occurred. If it is determined that a policy violation occurred, the head of the sponsoring department is responsible for determining sanctions, including whether an affiliate's status should be revoked under the terms of university policy 1337. This decision is final and cannot be appealed.

3.3.1. Once the final decision is reached, the head of the sponsoring department will notify the Title IX Officer in writing of the final decision and any sanctions and remedies applied. The Title IX Officer will notify the complainant(s), respondent(s), and the Title IX Office simultaneously, within two business days of receipt, of the final decision and any sanctions and remedies, in accordance with applicable disclosure laws. Additional notifications will be made according to Section 2.10.2, including to the respondent's external supervisor.

4. Alternative Resolution

4.1. The alternative resolution process (also known as an informal resolution

process) is a method of resolving sexual misconduct or Title IX sexual harassment allegations without the investigation and hearing process. After a formal complaint has been filed under Policy 1346 or Policy 1340, the complainant(s) and respondent(s) may agree to enter an alternative resolution process, if available.

- 4.1.1. The alternative resolution process may be initiated through the Title IX Coordinator at any time prior to reaching a determination regarding responsibility in an investigation and hearing process.
- 4.1.2. The alternative resolution process is voluntary, requires written consent, and cannot be required. All parties must agree to an alternative resolution process.
- 4.1.3. Any party may withdraw from alternative resolution at any time prior to agreeing to a resolution and initiate or resume the investigation and hearing process.
- 4.1.4. Cases in which an employee or affiliate is the respondent and a student is the complainant are not eligible for an alternative resolution process.
- 4.2. Alternative resolutions are conducted by a facilitator trained in Title IX procedures. The facilitator will be assigned to the case by the Title IX Officer. All parties will be allowed to express concerns of bias toward a party or conflict of interest and request that the Title IX Officer assign a different facilitator to conduct the alternative resolution. The final decision to replace the assigned facilitator lies with the Title IX Officer.
- 4.3. The facilitator works with both the complainant(s) and the respondent(s). Initial meetings with the parties 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, comfort, and preferences of the parties.
- 4.4. The exact structure of the alternative resolution process may take on various forms, the format of which will be decided by the facilitator after speaking to the parties in their initial individual meetings. Variables that will determine the type of alternative 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 parties
 - Status regarding acceptance of responsibility or acknowledgement of wrongdoing or harm caused as a result of the respondent's actions
- 4.5. In the alternative resolution process, witnesses may be contacted for participation, but live cross-examination does not occur.
- 4.5.1. The complainant(s) and respondent(s) may be asked to provide names of witnesses and the type of information each witness would provide. The facilitator decides if witnesses will be contacted according to relevancy of the information they may provide. If witnesses are contacted, the facilitator will contact each witness to speak directly with the witness.
- 4.6. No cross-examination occurs between parties or between the parties and witnesses. The facilitator is the only person to ask parties or witnesses for clarifying information.
- 4.7. The alternative process must be completed within 20 business days of the decision to enter an alternative process unless the parties and the facilitator agree to an extension.
- 4.7.1. If the parties cannot come to a mutually agreed upon resolution within the 20-business-day timeframe, without coercion or undue pressure, and without approval of extension, the case will be returned to the investigation and hearing process.
- 4.8. Once an agreement has been reached and the facilitator approves, all parties will sign an agreement abiding by the outcome and, if applicable, the remedies and sanctions reached in the process.
- 4.8.1. Alternative resolution may result in disciplinary actions, remedies, or sanctions up to and including termination of employment or affiliate status.
- 4.9. Once the agreement is signed by the parties, the decision is final; the decision cannot be appealed, nor can parties request an investigation and hearing process after that point.
- 4.10. The final signed agreement will be submitted to the Title IX Officer by the facilitator on the same day the resolution has been reached.

4.11. The Title IX Officer will provide the agreement to the Title IX Office and the respondent's supervisor and vice president within two business days of receipt.

4.11.1. During the period of any assigned remedies or sanctions, the respondent's supervisor will monitor the progress of the assigned remedies or sanctions to ensure they are upheld.

5. Record-Keeping

5.1. The Title IX Officer will maintain all records and documentation concerning the adjudication process for a period of at least seven years.