

## **TITLE IX INVESTIGATION AND HEARING POLICY**

**1. Purpose and Scope.** This policy is implemented in order to describe the investigation and hearing process that is applicable to investigations and hearings conducted pursuant to the regulations promulgated by the U.S. Department of Education, published at 34 CFR Part 106, commonly known as Title IX.

**2. Formal Complaint and Process.** An incident report or other written report, documenting the basis for a Title IX complaint must be filed in order to begin the Title IX investigation process. An initial inquiry will then be made, either establishing the necessity of an investigation or a dismissal of the Formal Complaint. Once the necessity of an investigation of a Formal Complaint has been established, the University will then:

- a. Assign investigator(s), who are then required to provide a written investigation report to both parties, the Title IX Coordinator, and the decision makers;
- b. Offer informal resolution to both parties unless the case involves a student as a complainant and University faculty or staff as a respondent;
- c. Upon completion of the investigation of the Formal Complaint, a hearing will then be conducted on the merits of the Formal Complaint.

**3. Dismissal of Formal Complaint.** After receiving the Formal Complaint and establishing the necessity of an investigation, the University may dismiss the Formal Complaint without prejudice subject to the subsections below. In the event of a dismissal, the complainant may also file a report or grievance through other channels such as student conduct or professionalism if the complaint does not rise to a Title IX violation. Occasions for dismissal are:

- a. A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein. The University will continue to pursue any allegations that are not withdrawn. In addition, the University may pursue a Title IX complaint if it is in the best interest of the University, the complainant or as required by law;
- b. The conduct alleged in the formal complaint would not constitute sexual misconduct as defined in the University's Title IX Policy, even if proved;

LIFE *in* DISCOVERY

3333 Green Bay Road, North Chicago, Illinois 60064 · [www.rosalindfranklin.edu](http://www.rosalindfranklin.edu)

c. The conduct did not occur in the University's education program or activity keeping in mind that the definition of "occurrence in a University's education program or activity" includes interference with or limit of a student's or employee's ability to participate in or benefit from the services, activities or opportunities offered by the University;

d. The conduct did not occur against a person in the United States-this does not preclude the ability to file a report or grievance in another channel such as student conduct or professionalism;

e. The University may pursue the Title IX grievance process if the complainant or respondent has withdrawn, has graduated, is on a leave of absence, is not enrolled, or is no longer an employee.

f. Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

g. The Title IX Coordinator shall send written notice of the dismissal and reason(s) therefore simultaneously to the parties, along with appeal rights for the following bases:

- i. procedural irregularity that affected the outcome of the matter;
- ii. new evidence that was not reasonably available at the time the dismissal was made, that could affect the outcome of the matter; and
- iii. 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, and consistent with appeal procedures described in this policy (an allegation of conflict of interest will be handled pursuant to University policy).

h. The dismissal of the complaint will be with regard to conduct that is a violation under Title IX. Such a dismissal does not preclude action under other provisions of the University's code of conduct or other policies. The University may pursue allegations in the complaint if in the best interests of the University.

**4. Delays.** The University may temporarily delay the investigation for good cause.

- a. Good cause may include considerations such as insufficient time for the party to prepare to participate in the investigation; the unavailability of a party or a witness; concurrent law enforcement activity; the need for language assistance or accommodation of disabilities, addition of new allegations and/or consolidation of existing grievances. Whether to approve a delay and the duration of any delay shall include considerations of foreseeable adverse impact on fairness and the education or employment environment caused by a delay.
- b. Each party shall be provided written notice of any delay and the reasons therefore.

**5. Investigators.**

- a. The Title IX Coordinator shall assign investigator(s) to begin interviews in a timely manner with the complainant, respondent, and all other parties or witnesses pertinent to the case.
- b. The investigators shall:
  - i. have received training in: Title IX investigations, the definitions of prohibited behavior outlined in the Title IX policy, the scope of the University's education program or activity, how to serve impartially, issues of relevance and evidence, especially on the exclusion of evidence as it pertains to the complainant's sexual predisposition or prior sexual behavior on the basis that it is not relevant;
  - ii. not have a conflict of interest with either of the parties or a bias for or against complainants or respondents generally
  - iii. document and gather all evidence discovered during the interviews;
- c. The investigator may seek and obtain legal advice from University employed or retained counsel regarding matters of interpretation of this policy and applicable laws.
- d. Either party may request a change in investigator upon a showing of a conflict of interest.

**6. General Rules of the Investigation.**

- a. Complainants and respondents shall be treated equitably.

- b. All relevant evidence (inculpatory and exculpatory) shall undergo objective evaluation.
- c. Credibility determinations shall not be based on a person's status as a complainant, respondent, or witness.
- d. There shall be a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the hearing process. Providing supportive measures to either party, including No Contact Orders is not an indication of bias, inequity or in any way reduce the presumption that the respondent is not responsible for the alleged conduct
- e. Each party has equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.
- f. Neither party may be restricted from discussing the allegations under investigation or from gathering and presenting relevant evidence to the investigator.

#### **7. Interview of Each Party.**

- a. Notice- each party shall be given written notice of the date, time, location, attendees, and purpose of their respective investigative interview, with sufficient time for the party to prepare to participate.
- b. May Have Another Person Present-each party may have another person, of that party's choice, present during any interview with the investigator, if reasonably available. The role of that other person is to assist that party, which may include, for example, providing advice, comfort, or support to that party. "Reasonably available" means the individual is willing and able to accompany that party and the person is available to attend the entire scheduled interview, subject to a reasonable temporary delay to accommodate a brief period of unavailability.

**8. Gathering Relevant Evidence.** The burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the investigator(s), not the parties. Accordingly, the investigator(s) shall gather evidence that is considered relevant and not otherwise impermissible under this policy. This evidence may be in the form of witness statements, documents, and other information.

- a. **Written Consent Required for Party's Health Records.** Investigators must obtain the party's voluntary written consent in advance of obtaining, as part of their investigation records, documents that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the investigator obtains that party's voluntary, written consent to do so for the investigation and potential hearing process.
- b. **Relevant Evidence.** Evidence is relevant if either it assists the investigator or decision makers to determine whether a matter of fact exists or not as it relates to
  - i. the determination of responsibility for any pending allegation or
  - ii. the credibility of any witness.
- c. **Impermissible Evidence.** The following evidence is defined as not permissible:
  - i. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior, unless:
    - (a) such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or
    - (b) the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.
  - ii. Questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege. Information protected under a legally recognized privilege is the content of confidential communications between attorney/client, healthcare provider/patient, clergy/penitent, or spouses.

**9. Review and Respond to Evidence Gathered.** At the conclusion of gathering evidence, the investigator or Title IX Coordinator shall provide to each party and party's advisor, a copy of evidence gathered consistent with this policy. Each party has 10 days in which to

inspect and review that evidence and provide to the investigator or Title IX Coordinator a written response, which the investigator will consider prior to completion of the investigative report.

**10. Investigation Report.** The investigator shall create a report that fairly summarizes the information gathered consistent with this policy and deliver it to the Title IX Coordinator, each party, and party's advisor for their review and written response. The Investigation Report will be sent along with the Notice of Hearing to the party and party's advisor at least 10 days prior to the hearing date.

**11. Notice of Hearing.** Each party shall be provided written notice of the date, time, location, participants, and purpose of hearing. The scheduled date of the hearing shall be no earlier than 10 calendar days after the investigation report has been sent to each party and the party's advisor in an electronic format or a hard copy, for their review and written response.

**12. Hearing Decision-Maker(s).**

a. Appointment. The Title IX Coordinator shall appoint one or more University employees or designees to be the decision-maker(s) for a case. In the event there are more than one decision-maker, then there shall be an odd number of decision-makers, with one identified as the Chair. The decision-maker(s) shall:

i. have received training, prior to performing the functions of this role, on the following, as defined by the Title IX regulations: the definition of sexual harassment, the scope of the University's education program or activity, how to conduct an investigation and grievance process, how to serve impartially, and on issues of relevance of questions and evidence (including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant).

ii. have received training, prior to performing the functions of this role, on technology to be used at live hearings, and

iii. not have a conflict of interest with the complainant or respondent. Either party may request a change of decision-maker(s) upon a showing of a conflict of interest.

b. Authority.

i. The decision-maker(s) have authority to act on all matters regarding the determination of responsibility and sanctions, as described in this policy.

ii. In addition, the decision-maker (or Chair, if more than one decision-maker, who would then, if challenged, be subject to overrule by a majority of decision-makers) has authority to implement and make decisions regarding administrative and procedural matters on behalf of the university such as providing notice, scheduling hearing, approving and denying delays, determining admissibility of evidence, timing and order of witnesses, and determining and enforcing the general conduct and decorum of the hearing.

c. Obtaining Legal Advice from Counsel. The decision maker(s) may seek and obtain legal advice from University employed or retained legal counsel regarding matters of interpretation of this policy and applicable laws.

**13. Party's Advisor.** Each party attending a hearing shall have an advisor present during the hearing. A party's advisor may not participate in the hearing procedures except to, on behalf of that party, pose questions to the other party and witnesses during the hearing. If a party's advisor has been found to have violated university policies or to have engaged in behavior deemed by the university to amount to harassment, abuse, or intimidation of any party, witness, investigator, decision-maker, appeal authority, or any other person involved in the resolution of the matter, then that individual may be prohibited from further participation in the role as a party's advisor. A party's advisor shall be an individual of the party's choice. If a party, for whatever reason, including unavailability, appears at the hearing without an advisor, the university shall appoint an advisor for that party.

**14. General Rules of the Hearing.**

- a. Pre-Hearing Meeting. Prior to the hearing, the decision makers will meet with the party and their advisor to discuss their intended questions, order of the proceedings, and to make preliminary rulings on relevancy.
- b. The decision makers will make an opening statement to both parties and advisors at the outset of the hearing regarding the order of the proceedings, the conduct and expectations of the parties and their advisors.
- c. If the decision makers decide that a party or their advisors have become abusive, disrespectful, repetitive or otherwise inappropriate, they may terminate that individual's further participation in the proceedings.
- d. Complainants and respondents shall be treated equitably.
- e. All relevant evidence (inculpatory and exculpatory) shall undergo objective evaluation.
- f. Credibility determinations shall not be based on a person's status as a complainant, respondent, or witness.
- g. There shall be a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the hearing process.
- h. No adverse inference shall be drawn based solely on a party's absence or witness's refusal to submit to cross-examination.
- i. At the request of either party, the hearing shall be conducted with the parties physically located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party or the witness answering questions.
- j. The university may determine that any or all parties, witnesses, and/or other participants will appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.



k. The university shall create an audio or audiovisual recording, or transcript, of the live hearing and make it available to the parties for inspection and review.

**15. Rules Regarding Evidence.**

a. Burden to Overcome Presumption- the burden of proof and the burden of gathering evidence sufficient for the decision-maker(s) to overcome the presumption that a respondent is not responsible rests on the university, not the parties. Witnesses and documents identified in the investigation report are normally used, when determined to be proper evidence, to fulfill this burden.

b. Posing Questions of Witnesses- only questions that have been ruled by the decision-maker(s) to be relevant, including questions from the pre-hearing meeting, and not otherwise defined as impermissible under this policy may be posed to a witness. The decision makers have the ability to ask relevant questions of either party or any witness that they believe will assist them in their fact-finding and decision making. This includes requests for documents, further inquiry into facts presented in the Investigative report or testimony, and anything else that will aid the decision makers in fulfilling their duties.

i. If a question is asked during the hearing that the decision makers rule as irrelevant, abusive, repetitive, or otherwise impermissible during the hearing, that decision shall be explained during the hearing which is documented by virtue of transcription and/or recording of the proceedings.

ii. A party is not permitted to directly pose questions of any witness.

iii. Questions shall be posed by the party's advisor or decision-maker directly, orally, and in real time at the hearing.

c. Relevant-evidence is relevant if either it assists the decision-maker to determine whether a matter of fact exists or not as it relates to

i. the determination of responsibility for any pending allegation or

ii. the credibility of that witness or another witness.

d. Impermissible Evidence-the following evidence is defined as not permissible:

i. questions and evidence about the complainant's sexual predisposition or prior sexual behavior, unless:

(a) such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or

(b) such questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

ii. questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege. Information protected under a legally recognized privilege is the content of confidential communications between attorney/client, healthcare provider/patient, clergy/penitent, or spouses.

**16. Deliberation by Decision-Maker(s).** At the conclusion of the hearing, the decision-maker(s) shall deliberate in order to make a determination for each pending allegation. This will normally occur within three working days of completion of the hearing.

a. During deliberation, the decision-maker(s) remain subject to the paragraphs describing the General Rules of the Hearing and the Rules Regarding Evidence.

b. During deliberation, no person shall be present with the decision-makers. In the event the decision-maker(s) seek legal advice, then the decision-makers shall pause deliberating, seek and obtain the legal advice, and then resume deliberation after the departure of the person who provided the legal advice.

c. For each allegation in which the respondent was determined to be responsible or not responsible, the decision-maker(s) shall articulate findings of fact that support that determination. These findings must be based on a preponderance of the evidence, meaning that, based on the greater weight of the evidence, an asserted fact is more probable to be true than not. Weight of evidence is not quantitative or amount of evidence; rather, it is a qualitative assessment of the persuasive nature of the evidence.

d. For each finding of responsibility, the decision maker(s) must articulate what sanctions are imposed, if any, and their rationale.

**17. Hearing Report.** The decision-maker(s) shall create a report and deliver it simultaneously to the complainant and respondent. This step will normally occur within 10 working days from the date determinations are completed by the decision-maker(s). The report shall include the following:

- a. The allegations.
- b. The procedural history from the receipt of the complaint to the hearing.
- c. The decision-maker(s)'s findings of fact that support its determination for each allegation.
- d. The decision-maker(s) determination regarding responsibility for each allegation.
- e. The university determination regarding sanctions, and its rationale.
- f. The steps taken, if any, by the university designed to restore or preserve the complainant's equal access to the education program or activity and its rationale.
- g. The right of each party to appeal the determination of responsibility, only if done so in writing, submitted to the appeal authority within seven calendar days of receiving the report, and identifies a proper basis or bases and contains a clear explanation of the reasoning for one or more proper basis for appeal, which are only:
  - i. Procedural irregularity that affected the outcome of the matter;
  - ii. New evidence that was not reasonably available at the time the determination regarding responsibility that could affect the outcome of the matter; and
  - iii. 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.

h. If the decision-maker(s) conclude that other provisions of applicable policies should be addressed, then the decision-maker(s) shall include a recommendation by identifying the relevant facts and other policies in the documentation.

**18. Effective Date of Determination of Responsibility.** The determination regarding responsibility becomes final either on the date that the university 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.

**19. Qualifications and Procedures of the Appeal Authority.**

- a. The appeal authority shall:
  - i. have received training, prior to performing the functions of this role, on the following, as defined by the Title IX regulations: the definition of sexual harassment, the scope of the university's education program or activity, how to conduct an investigation and grievance process, how to serve impartially, and on issues of relevance of questions and evidence (including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant).
  - ii. have received training, prior to performing the functions of this role, on technology to be used at living hearings, and
  - iii. not have a conflict of interest or bias for or against complainants or respondents generally or the specific complainant or respondent.
- b. Upon receipt of the appeal, the appeal authority shall review the appeal to determine compliance with the criteria for the right of appeal described in this policy. If any of the criteria are not met, then the appeal shall be dismissed for failure to meet criteria for appeal.
- c. If the criteria for filing an appeal are met, then the appeal authority shall provide a copy of the appeal to each party and provide each party seven days to submit to the appeal authority a written statement in support of or challenging the determination of responsibility.
- d. Upon expiration of the time for parties to submit statements, the appeal authority shall decide the appeal. This normally will occur within 10 working days from the expiration of the time to submit statements.

e. The appeal authority shall issue and deliver, to each party simultaneously, a written decision the includes the following:

- i. written appeal
- ii. notice of appeal to all parties
- iii. written statements of parties, if any
- iv. appeal decision and the rationale for the result

**20. Record Keeping.** A copy of the Investigation Report and any written responses received by a party shall be delivered to the Title IX Coordinator, who shall retain those records for seven years.

**21. Confidentiality.** The identities of complainants, respondents, witnesses, and individuals accusing and being accused of misconduct pursuant to regulations promulgated by the U.S. Department of Education, published at 34 CFR Part 106 and commonly referred to as Title IX, are generally kept in confidence. The identities of the individuals in a Title IX case may be disclosed to those in leadership in the students' department and those who can assist with carrying out No Contact Orders, other related Supportive Measures, and in order to further the academic and research purposes of the parties and the department. Information may be released internally only on a need-to-know basis and may be disclosed outside of the university only in accordance with FERPA or as required by applicable law.

## **22. REFERENCES AND RELATED POLICIES**

Title IX Policy

Title IX Investigation and Hearing Policy

## **23. POINTS OF CONTACT:**

Allena Barbato, JD LMFT, Director of Title IX Compliance and Equity Officer and Title IX Coordinator

Heather Kind-Keppel, EdD, MS, Med, Executive Director of Equity, Education, and Outreach and Deputy Title IX Coordinator

Sally Madden, MBA, SPHR Associate Vice President of Human Resources and Deputy Title IX Coordinator