

## Hearing Procedures for Complaints of Sexual Harassment

### I. Scope

These hearing procedures apply to the resolution of Formal Complaints of Sexual Harassment under the University's Sexual Harassment Policy after such Formal Complaints have been investigated by the Office of Institutional Opportunity and Access ("IOA") pursuant to IOA's Title IX Resolution Process.

### II. Definitions

- A. Administrative Office** refers to the office within the University responsible for administering these procedures. The Administrative Office varies depending on the status of the Respondent (i.e., administrator; faculty; student; or staff/third party) as specified herein.
- B. Administrative Officer** refers to an individual designated by the Administrative Office to coordinate the logistics of these procedures in collaboration with the Hearing Chair.
- C. Advisor** refers to an individual of a party's choosing who provides emotional support to a party; assists the party in preparing for the hearing; attends pre-hearing meetings with the party; and who conducts questioning on behalf of a party at the hearing. An advisor may, but does not have to be, an attorney. The role of the Advisor is further explained herein.
- D. Complainant** refers to the individual who is alleged to be the victim of the alleged Sexual Harassment stated in the Formal Complaint.
- E. Formal Complaint** refers to a Formal Complaint as defined in IOA's Title IX Resolution Process.
- F. Hearing Chair** refers to a single individual who oversees and administers the pre-hearing procedures, hearing, deliberation, and determination. The Hearing Chair, together with the Hearing Panel, resolves disputed facts under a preponderance of the evidence standard and determines whether those facts so found substantiate one or more of the allegations of Sexual Harassment in the Formal Complaint.
- G. Hearing Panel** refers to two individuals who, together with the Hearing Chair, receive evidence at the hearing, resolve disputed facts under a preponderance of the evidence standard, and determine whether those facts so found substantiate one or more of the allegations of Sexual Harassment in the Formal Complaint.
- H. Relevant Evidence** is that evidence which has any tendency to make a fact more or less probable than it would be without the evidence and where the fact is of consequence in determining the allegations of Sexual Harassment

at issue in a Formal Complaint. Some evidence, such as certain evidence of a Complainant's sexual history, is categorically excluded as irrelevant, as further specified herein.

- I. **Respondent** refers to the individual who is alleged to have perpetrated the alleged Sexual Harassment stated in the Formal Complaint.
- J. **Sexual Harassment** refers to Sexual Harassment as defined in the University's Sexual Harassment Policy, including Quid Pro Quo Sexual Harassment, Hostile Environment Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, and Stalking as those terms are defined in the University's Sexual Harassment Policy.

### III. **Receipt of the IOA Investigative Report By Administrative Office**

At the conclusion of its Title IX Resolution Process, IOA will transmit a copy of its final investigation report, together with all evidence directly related to the allegations of Sexual Harassment in the Formal Complaint, to the Administrative Office. The Administrative Office responsible for administering these procedures varies based on the status of the Respondent. The relevant offices are:

Provost and Vice Chancellor Respondents: Office of the Chancellor

Vice Provosts, Deans, and Faculty Respondents: Office of the Provost

Student Respondents: Office of the Vice Provost of Student Affairs

Staff and Other Respondents: Department of Human Resources Management

Upon receipt of the investigation report and evidence, the Administrative Office will appoint an Administrative Officer who shall thereafter be responsible for coordinating the selection of a Hearing Chair and Hearing Panel, assisting the Hearing Chair in arranging the pre-hearing conference and hearing, and ensuring an appropriate record of the proceedings is made.

### IV. **Selection of Hearing Chair**

The University will maintain a pool of up to six suitably qualified individuals to serve as Hearing Chairs under these procedures. The pool shall include individuals reflective of the diversity of the University community.

Such individuals shall possess a law degree and have experience in the conduct of administrative proceedings, the presentation of evidence, ruling on the admissibility of evidence, administering deliberations, and drafting written decisions. All Hearing Chairs shall also receive training from the University on the University's definition of Sexual Harassment; the scope of the University's education programs and activities; how to conduct the various procedures and hearing specified herein; how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias;

relevance of questions and evidence, including when questions and evidence about a Complainant's sexual history are not relevant; and training on any audio or video technology that may be used to effectuate the pre-hearing conference or hearing.

The Administrative Officer shall select a member of the pool to serve as Hearing Chair giving due regard to factors such as the individual's availability to promptly conduct a hearing; the individual's general familiarity with the particular aspect of the University's operations from which the Formal Complaint arose; potential conflicts of interest that may exist based on the identity of the parties or subject matter involved; and the relative equal distribution of cases across the pool.

After the Administrative Officer selects the Hearing Chair, the Administrative Officer will provide the parties with written notice of the Hearing Chair's selection. Such notice shall advise the parties that they have three days from receipt of the notice to advise the Administrative Officer of any objection to the selected Hearing Chair based on a claimed conflict of interest or bias.

If any party claims a conflict of interest or bias on the part of the selected Hearing Chair, the Administrative Officer shall determine whether, in fact, such a conflict of interest or bias exists. If the Administrative Officer determines a conflict of interest or bias exists, the Administrative Officer shall select a new Hearing Chair and provide the parties with written notice as specified in this section. If the Administrative Officer determines that a conflict of interest or bias does not exist, the Administrative Officer shall notify the parties in writing, and the matter will proceed with the identified Hearing Chair.

## **V. Review for Discretionary Dismissal**

After the selection of the Hearing Chair, and prior to the selection of a Hearing Panel, the Hearing Chair, in consultation with IOA and the Administrative Officer, will review the final investigation report, together with all evidence directly related to the allegations of Sexual Harassment in the Formal Complaint, and determine whether the Formal Complaint should be dismissed for any one or more of the following grounds:

- The Complainant has provided the Title IX Coordinator written notice that the Complainant wishes to withdraw the Formal Complaint or any discrete allegations therein (in which case those discrete allegations may be dismissed);
- The Respondent is no longer enrolled or employed by the University, as the case may be; or
- Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the Formal Complaint, or any discrete allegations therein (in which case those discrete allegations may be dismissed).

In the event the Hearing Chair determines that a Formal Complaint should be dismissed pursuant to this section, the Hearing Chair will provide written notice of dismissal to the parties and advise them of their right to appeal as specified herein. The Hearing Chair may refer the dismissed allegations for resolution by other University offices, as appropriate.

## **VI. Selection of Hearing Panel**

If the Formal Complaint is not dismissed, the Administrative Officer shall select two individuals to serve as the Hearing Panel. At least one of the two individuals selected must share the same status as the Respondent (i.e., faculty, student, or staff). Such individuals shall be selected giving due regard to factors such as the individual's availability to promptly participate in a hearing; the individual's general familiarity with the particular aspect of the University's operations from which the Formal Complaint arose; potential conflicts of interest that may exist based on the identity of the parties or subject matter involved; and the relative equal distribution of cases across the pool.

Such individuals shall be drawn from a pool of sixteen suitably qualified individuals. The pool shall include at least four students, four faculty, and four staff. Student members shall be appointed by the Vice Provost for Student Affairs in consultation with the Student Senate President. Faculty members shall be appointed by the Provost and Executive Vice Chancellor in consultation with the Faculty Senate President. Staff members shall be appointed by the Vice Provost for Operations in consultation with the Staff Senate President. The remaining four members (who may be students, faculty, staff, or some combination thereof) shall be appointed by the Chancellor in his or her sole discretion. Pool members shall serve two-year terms which may be renewed by the appointing authority for a second two-year term. Notwithstanding the foregoing, half of each category of pool members shall serve an initial one-year term, which may be renewed by the appointing authority for a second two-year term.

The pool shall include individuals reflective of the diversity of the University community, including individuals from various schools and departments. Such individuals shall receive training from the University on the University's definition of Sexual Harassment; the scope of the University's education programs and activities; the individual's role at the hearing as specified herein; how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias; relevance of questions and evidence, including when questions and evidence about a Complainant's sexual history are not relevant; and training on any audio or video technology that may be used to effectuate the pre-hearing conference or hearing.

After the Administrative Officer selects the Hearing Panel, the Administrative Officer will provide the parties with written notice of the Hearing Panel's selection. Such notice shall advise the parties that the parties have three days from receipt of the notice to advise the Administrative Officer of any objection a party may have based on a claimed conflict of interest or bias.

If any party claims a conflict of interest or bias on the part of a member of the selected Hearing Panel, the Administrative Officer shall determine whether, in fact, such a conflict of interest or bias exists. If the Administrative Officer determines a conflict of interest or bias exists, the Administrative Officer shall select a new member of the Hearing Panel and provide the parties with written notice as specified in this section. If the Administrative Officer determines that a conflict of interest or bias does not exist, the Administrative Officer shall notify the parties, in writing, and the matter will proceed with the identified Hearing Panel.

## **VII. Pre-Hearing Procedures**

### **A. Hearing Notice and Written Response to Investigation Report**

After the Hearing Chair and Hearing Panel are selected, the Hearing Chair will send written notice to the parties notifying them of the deadline for the parties to submit any written response to the investigation report; a date for the pre-hearing conference; and a date and time for the hearing (to including an anticipated length in hours). Neither the pre-hearing conference, nor the hearing itself, may be held any earlier than fourteen calendar days from the date of transmittal of the written notice specified in this section.

A party's written response to the investigation report must include:

- To the extent the party disagrees with the investigation report, any argument or commentary regarding such disagreement;
- Any evidence that a party did not have a reasonable opportunity to provide during the IOA investigation or that the party believes was improperly excluded by the IOA;
- Any argument that evidence should be categorically excluded from consideration at the hearing based on privilege, relevancy, the prohibition on the use of sexual history specified herein, or for any other reason;
- A list of any witnesses that the party contends should be called to attend the hearing pursuant to an attendance notice issued by the Administrative Officer;
- A list of any witnesses that the party intends to bring to the hearing without an attendance notice issued by the Hearing Chair;
- Any request that the parties be separated physically during the pre-hearing conference and/or hearing;
- Any other accommodations that the party seeks with respect to the pre-hearing conference and/or hearing;

- The name and contact information of the Advisor who will accompany the party at the pre-hearing conference and hearing;
- If the party does not have an Advisor who will accompany the party at the hearing, a request that the University provide an Advisor for purposes of assisting the party in preparing for the hearing and conducting questioning at the hearing.

A party's written response to the investigation report may also include:

- Argument regarding whether any of the allegations in the Formal Complaint are supported by a preponderance of the evidence; and
- Argument regarding whether any of the allegations in the Formal Complaint constitute Sexual Harassment.

### **B. Pre-Hearing Conference**

Prior to the hearing, the Hearing Chair will conduct a pre-hearing conference with the parties and their Advisors. By default, the pre-hearing conference will be conducted virtually, by use of video and audio technology, where all participants participate simultaneously and contemporaneously by use of such technology. However, upon request of either party, or in the Hearing Chair's discretion, the pre-hearing conference may take the form of separate, sequential meetings between the Hearing Chair and each party, whether conducted virtually or in-person.

During the pre-hearing conference, the Hearing Chair will discuss the hearing procedures with the parties; address matters raised in the parties' written responses to the investigation report, as the Hearing Chair deems appropriate; discuss whether any stipulations may be made to expedite the hearing; discuss the witnesses the parties have requested be served with notices of attendance and/or witnesses the parties plan to bring to the hearing without a notice of attendance; and resolve any other matters that the Hearing Chair determines, in the Hearing Chair's discretion, should be resolved before the hearing.

### **C. Issuance of Notices of Attendance**

After the pre-hearing conference, the Administrative Officer will transmit notices of attendance to any University employee (including administrator, faculty, or staff) or student whose attendance is requested at the hearing as a witness. The notice will request the subject to appear at the hearing at the specified date and time and advise the subject to contact the Administrative Officer immediately if there is a scheduling conflict.

The subject of an attendance notice should notify any manager, faculty member, coach, or other supervisor, as necessary, if attendance at the hearing will conflict with job duties, classes, or other obligations. All such managers, faculty members, coaches, and other supervisors are required to excuse the subject of the obligation, or provide some

other accommodation, so that the subject may attend the hearing as specified in the notice.

The University has no control over the schedule or availability of any witness who is not an employee or a student, and a notice of attendance will not be issued to any such third-party individual.

## **VIII. Pre-Hearing Review of Investigation Report and Evidence**

Prior to commencement of the hearing, the Hearing Chair and Hearing Panel will review the IOA final investigation report and all evidence directly related to the allegations of Sexual Harassment in the Formal Complaint. This review of materials is provisional and intended to provide background and orientation to the Hearing Chair and Hearing Panel in preparing for the hearing. The Hearing Chair must eventually exclude from consideration in deliberation any evidence developed during the investigation that is deemed inadmissible at the hearing, including specifically, but not limited to, the statements of any party or witness who refuses to submit to questioning by a party Advisor as specified herein.

## **IX. Hearing**

### **A. Nature of the Hearing**

The purpose of the hearing is for the Hearing Chair and Hearing Panel to receive relevant testimonial and non-testimony evidence; to resolve disputed facts using a preponderance of the evidence standard; and to determine whether the facts so found substantiate one or more of the allegations in the Formal Complaint as a violation of the Sexual Harassment Policy. The hearing will operate from a presumption that the Respondent is not responsible for the alleged misconduct until a determination regarding responsibility is made final.

The hearing is not a formal judicial proceeding and strict rules of evidence do not apply.

### **B. Setting and Recording**

The Administrative Officer will assist the Hearing Chair in arranging the logistics of the hearing including, but not limited to, securing a suitable space on campus, if the hearing is to be held in person or to secure access to appropriate technology if the hearing is to be held virtually. The Administrative Officer will also ensure that the hearing (but not deliberation) is audio or video recorded.

The hearing will be conducted live, with simultaneous and contemporaneous participation by the parties and their Advisors. By default, the hearing will be conducted with the Hearing Chair, Hearing Panel, the parties, the Advisors, witnesses, and other necessary University personnel together in the same physical location. However, upon request of either party, the parties will be separated into different rooms with technology

enabling the parties to participate simultaneously and contemporaneously by video and audio.

In the Hearing Chair's discretion, the hearing may be conducted virtually, by use of video and audio technology, where all participants participate simultaneously and contemporaneously by use of such technology.

### **C. Role of the Hearing Chair and Panel Members**

The Hearing Chair oversees the hearing process, rules on questions of relevance and admissibility, resolves all procedural disputes, questions parties and witnesses, and deliberates and votes with the Hearing Panel to determine responsibility for the allegations in the Formal Complaint at the conclusion of the hearing process. The Hearing Chair is responsible for maintaining decorum and professionalism in the hearing. The Hearing Chair has discretion to interpret and apply these procedures in any manner that is not clearly unreasonable and is consistent with Title IX of the Education Amendments of 1972 and its implementing regulation.

The Hearing Panel observes the testimony and other evidence presented at the hearing, questions parties and witnesses when invited to do so by the Hearing Chair, and deliberates and votes with the Hearing Chair to determine responsibility for the allegations in the Formal Complaint at the conclusion of the hearing process.

### **D. Parties in Attendance**

The hearing is closed to all persons except the parties, their Advisors, the investigator, the Hearing Chair, the Hearing Panel, the Administrative Officer, and other necessary University personnel as determined by the Hearing Chair. With the exception of the investigator and the parties, witnesses will be sequestered until such time as their testimony is complete.

### **E. Convening the Hearing**

Immediately prior to convening the hearing, the Hearing Chair will ensure that an audio or video recording of the hearing is being made by the Administrative Officer and that the hearing room is cleared of all individuals who are not permitted to be present during the hearing. The Hearing Chair will then convene the hearing and clearly state for the record the date, time, and location of the hearing; the names of the Complainant and Respondent; the parties present at the hearing; any accommodations that have been provided at the request of a party or in the University's discretion; whether all or a portion of the hearing is being conducted virtually; and any other introductory matters that the Hearing Chair deems appropriate.

### **F. Statement of the Investigator**

After convening the hearing, the Hearing Chair will call the investigator to give an overview of the investigation process. Thereafter, the investigator will be subject to



questioning by the Hearing Chair and Hearing Panel, followed by questioning from each party's Advisor commencing first with questioning from the Advisor for the Complainant followed by questioning from the Advisor for the Respondent

#### **G. Statement of the Parties**

After questioning of the investigator is complete, the Hearing Chair will invite the Complainant to provide a statement regarding the events in question and identify and comment on any non-testimonial evidence the Complainant believes is relevant. After the Complainant has made a statement, or waived the right to make a statement, the Complainant will be subject to questioning by the Hearing Chair and Hearing Panel, followed by questioning from the Advisor for the Respondent.

After questioning of the Complainant is complete, the Hearing Chair will invite the Respondent to provide a statement to the Hearing Chair regarding the events in question and to identify and comment on any non-testimonial evidence the Respondent believes is relevant. After the Respondent has made a statement, or waived the right to make a statement, the Respondent will be subject to questioning by the Hearing Chair and Hearing Panel, followed by questioning from the Advisor for the Complainant.

#### **H. Testimony of Witnesses**

After questioning of the parties is complete, witnesses will be called to testify in the order determined by the Hearing Chair. Unlike the parties, witnesses will not be invited to make a statement but, instead, will be subject to questioning from the Hearing Chair and Hearing Panel, followed by questioning from each party's Advisor commencing first with questioning from the Advisor for the Complainant followed by questioning from the Advisor for the Respondent.

#### **I. Investigative Materials**

After the questioning of the parties and witnesses is complete, the Hearing Chair will identify any portion of the evidence developed during the investigation that the Hearing Chair has determined should be excluded from the hearing record based on rulings made at the pre-hearing conference, during the hearing itself, due to the refusal of a party or witness to submit to questioning by a party's Advisor, or for any other reason. The Hearing Chair will then provide the parties a final opportunity to raise any additional objections to inclusion of any other portions of the investigation record into evidence and resolve any such objections. All evidence from the investigation and hearing not specifically excluded by the Hearing Chair shall be deemed admitted into the hearing record and may be considered by the Hearing Chair and Hearing Panel as part of the deliberation.

#### **J. Closing Arguments**

After the Hearing Chair has ruled on the exclusion of any evidence developed during the investigation, the Hearing Chair will invite the Complainant to make a closing

argument. After the Complainant has made a closing argument, or waived the right to make a closing argument, the Hearing Chair will invite the Respondent to make a closing argument.

#### **K. Deliberation**

After closing arguments are complete, the Hearing Chair will conclude the hearing. Thereafter, the Hearing Chair and Hearing Panel will enter into deliberation, which shall be closed to all other persons with the exception of the University's legal counsel, whom the Hearing Chair may invite for the purpose of providing advice to the Hearing Chair and Hearing Panel.

#### **L. Access to and Use of Investigation Evidence**

During the hearing, the parties and their Advisors shall have access to the investigation report and a copy of all evidence developed by the IOA investigation directly related to the allegations of Sexual Harassment in the Formal Complaint. Such evidence may be utilized in the questioning of witnesses where relevant. Non-testimonial evidence utilized during the hearing shall be marked and referred to in such a manner as to make it clearly identifiable by audio (i.e., such as sequential marking of "exhibits").

#### **M. Rulings on Evidence**

Throughout the hearing, the Hearing Chair will independently and contemporaneously screen all questions for relevance and resolve any contemporaneous evidentiary objections raised by the parties. If the Hearing Chair does not exclude a question, it is presumed the Hearing Chair has deemed the question relevant and admissible. The Hearing Chair may exclude evidence that is unreasonably cumulative or duplicative.

#### **N. Exclusion of Testimony**

In the event that any party or witness does not to attend the hearing, or attends but refuses to participate in questioning by the parties' Advisors, the statements of that party or witness, as the case may be, whether given during the investigation or during the hearing, will not be considered by the Hearing Chair and Hearing Panel in reaching a determination of responsibility. Notwithstanding the foregoing, where statements of a party are themselves the alleged Sexual Harassment (i.e., the case is about verbal or written quid pro quo or hostile environment harassment), then those statements will not be precluded from admission under this section.

In applying this section, neither the Hearing Chair nor the Hearing Panel will draw an inference about the determination regarding responsibility based solely on a party or a witness's absence from the live hearing and/or refusal to submit to questioning by the parties' Advisors.

## **O. Timing and Continuances**

The Hearing Chair will have discretion to set the overall length of the hearing and may set time limits for statements of the parties, questioning of parties and witnesses, and closing arguments. A hearing will not exceed seven hours in length absent extraordinary circumstances. Once a hearing is commenced, it will be continued to another day only for good cause as determined by the Hearing Chair. The Hearing Chair has discretion to schedule breaks during the hearing.

## **P. Advisor of Choice**

During the pre-hearing conference and hearing, the Complainant and Respondent will have the right to be accompanied by an advisor of their choice. The Advisor may be, but is not required to be, an attorney.

Except for conducting the questioning of witnesses during the hearing, the Advisor will play a passive role and is not permitted to communicate on behalf of a party, insist that communication flow through the Advisor, or communicate with the University about the matter. Advisors are not permitted to make objections, present arguments, or engage in any other active role apart from questioning of witnesses.

In the event a party is not able to secure an Advisor to attend the hearing, and requests the University to provide an Advisor, the University will provide the party an Advisor, without fee or charge, who will conduct questioning on behalf of the party at the hearing. The University will have sole discretion to select the Advisor it provides. The Advisor the University provides may be, but is not required to be, an attorney.

The University is not required to provide a party with an Advisor in any circumstance except where the party does not have an Advisor present at the hearing.

## **Q. Support Persons**

In addition to an advisor of their choice, a party may be accompanied to the hearing by up to two support persons of their choice, provided a support person cannot be a witness. The support persons play a passive role and are not permitted to communicate on behalf of a party, insist that communication flow through the support person, or communicate with the University about the matter. Support persons are not permitted to make objections, present arguments, or engage in any active role. A support person cannot be a witness.

## **R. Evidence of Sexual History**

During the hearing, evidence regarding a Complainant's sexual predisposition or prior sexual behavior are not relevant, unless 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, or if 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. Notwithstanding the foregoing, a Complainant who affirmatively uses information otherwise considered irrelevant by this section may be deemed to have waived the protections of this section.

#### **S. Evidence of Privileged Communications**

During the hearing, the Hearing Chair and Hearing Panel are not permitted to access, consider, disclose, permit questioning concerning, or otherwise use the following types of records unless the party holding the privilege has provided prior, written consent:

- A party's 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 and maintained in connection with the provision of treatment to the party; or
- Information or records protected from disclosure by any other legally-recognized privilege, such as the attorney client privilege.

Notwithstanding the foregoing, a party who affirmatively uses information otherwise protected by this section may be deemed to have waived the protections of this section.

#### **T. Expectation of Professionalism and Prohibition on Disruptive Behavior**

All parties, Advisors, and other persons present at a hearing are required to act professionally, maintain decorum, and abide by the policy, these procedures, and any other rules specified by the Hearing Chair. The requirements of professionalism and decorum apply to all aspects of the hearing, including the manner in which questions are posed to parties and witnesses. Any party, Advisor, or other person who materially disrupts the proceeding or violates applicable policies, procedures, and rules, may be barred from further participation and/or have their participation limited, as the case may be, by the Hearing Chair.

#### **U. Nature and Rounds of Questioning**

Wherever these procedures contemplate questioning of a party or witnesses, the Hearing Chair has discretion to permit more than one round of questioning. In addition to ruling on questions of relevancy, the Hearing Chair may limit cumulative and redundant questioning.

#### **X. Deliberation**

After the hearing is complete, the Hearing Chair and Hearing Panel will privately deliberate over the matter. The deliberation will not be audio or video recorded. The

deliberation will include an objective evaluation of all relevant evidence collected during the investigation, including both inculpatory and exculpatory evidence, together with testimonial and non-testimonial evidence received at the hearing. While deliberating, the Hearing Chair and Hearing Panel will ensure that any credibility determinations made are not based on a person's status as a Complainant, Respondent, or witness. The Hearing Chair and Hearing Panel will take care to exclude from consideration any evidence that was ruled inadmissible at the pre-hearing conference, during the hearing, or by other operation of these procedures. The Hearing Chair and Hearing Panel will resolve disputed facts using a preponderance of the evidence (i.e., "more likely than not") standard and reach a determination regarding whether the facts that are supported by a preponderance of the evidence substantiate one or more of the allegations of Sexual Harassment in the Formal Complaint. In the deliberation, the the Hearing Chair and each member of the Hearing Panel have one vote. Abstentions are not permitted. A majority vote controls.

#### **XI. Determination of Sanctions and Remedial Measures**

In the event the Hearing Chair and Hearing Panel determine that the Respondent is responsible for violating the Sexual Harassment Policy the Hearing Chair will, prior to issuing a written decision, consult with the appropriate administrator with disciplinary authority over the Respondent and such administrator will determine any discipline to be imposed. The Hearing Chair will also, prior to issuing a written decision, consult with the Title IX Coordinator who will determine whether and to what extent ongoing support measures or other remedies will be provided to the Complainant.

#### **XII. Issuance of Written Decision**

After reaching a determination and consulting with the appropriate University administrator and Title IX Coordinator, the Hearing Chair will prepare a written decision that will include:

- Identification of the allegations potentially constituting Sexual Harassment made in the Formal Complaint;
- A description of the procedural steps taken by the University upon receipt of the Formal Complaint, through issuance of the written decision, including notification to the parties, interviews with the parties and witnesses, site visits, methods used to gather non-testimonial evidence, and the date, location, and people who were present at or presented testimony at the hearing;
- Articulate findings of fact, made under a preponderance of the evidence standard, that support the determination;
- A statement of, and rationale for, each allegation that constitutes a separate potential incident of Sexual Harassment, including a determination regarding responsibility for each separate potential incident;

- The discipline determined by the appropriate University administrator and any ongoing support measures or other remedies as determined by the Title IX Coordinator; and
- A description of the University's process and grounds for appeal, as specified herein.

The written determination will be signed by the Hearing Chair on behalf of the Hearing Chair and Hearing Panel. The written determination will then be transmitted by the Administrative Officer to the parties, the Administrative Officer, IOA, and other University officials, as appropriate. Transmittal of the written determination to the parties concludes the hearing process, subject to any right of appeal. In a typical case, the written determination will be transmitted within fourteen days of completion of the hearing, but this time period may vary depending on a range of factors including the complexity of the allegations at issue.

### **XIII. Appeal**

Either party may appeal the dismissal of a Formal Complaint or written determination, as the case may be, to an appeals panel of the University Judicial Board. Appeal is permitted one or more of the following grounds, in addition to those grounds specified in USRR 6.7.3.:

- A procedural irregularity affected the outcome;
- There is new evidence that was not reasonably available at the time the determination or dismissal was made, that could have affected the outcome;
- The Title IX Coordinator, investigator, Hearing Chair, or Hearing Panel, as the case may be, had a conflict of interest or bias for or against complainants or respondents generally, or against the individual Complainant or Respondent, that affected the outcome;
- The party was deprived of a right guaranteed by some other University policy or standard and the deprivation of that right affected the outcome.

No other grounds for appeal are permitted.

A party must file an appeal within fourteen days of the date they receive notice of dismissal or written determination appealed from. The appeal must be submitted in writing to the Chair of the University Judicial Board. If an appeal is untimely or fails to invoke one or more of the permitted grounds for appeal, it will be dismissed.

If a timely appeal is filed invoking one or more of the permitted grounds, it shall be processed and heard in the manner specified in University Senate Rules and Regulations ("USRR") Article VI, Section 7.

The determination of a Formal Complaint becomes final when the time for appeal has passed with no party filing an appeal or, if any appeal is filed, at the point when the University has resolved all appeals, either by dismissal or by transmittal of a written decision from the appeals panel. No further review or appeal is permitted beyond appeal to the University Judicial Board as specified herein.

#### **XIV. Conflicts of Interest, Bias, and Procedural Complaints**

The Title IX Coordinator, Administrative Officer, Hearing Chair, Hearing Panel, and appeals panel will be free of any conflicts of interest or bias. Any party who believes one or more of these individuals has a material conflict of interest or material bias must raise the concern promptly so that the University may evaluate the concern and find a substitute, if appropriate. The failure of a party to timely raise a concern of a conflict of interest or bias may result in a waiver of the issue.

#### **XV. Objections Generally**

Parties are expected to raise any objections, concerns, or complaints about the processes specified herein in a prompt and timely manner so that the University may evaluate the matter and address it, if appropriate. The failure of a party to timely raise an objection, concern, or complaint may result in a waiver of the issue.

#### **XVI. Recordings**

The recording of the hearing will be made only by the University and is considered property of the University, subject to any right of access that a party may have under this policy, FERPA, and other applicable federal, state, or local laws. Only the University is permitted to make a recording of the hearing. The surreptitious recording of any meeting, interview, hearing, or other interaction contemplated by these procedures is prohibited. Any party who wishes to transcribe a hearing by use of a transcriptionist must seek pre-approval from the Hearing Chair.

#### **XVII. False Information**

It is a violation of these procedures for any person to provide testimony or other evidence that the person knows to be false or in bad faith.

#### **XVIII. Discretion in Application**

The University retains discretion to interpret and apply these procedures in a manner that is not clearly unreasonable, even if the University's interpretation or application differs from the interpretation of the parties.

Despite the University's reasonable efforts to anticipate all eventualities in drafting these procedures, it is possible unanticipated or extraordinary circumstances may not be specifically or reasonably addressed by the express policy language, in which case the University retains discretion to respond to the unanticipated or extraordinary circumstance in a way that is not clearly unreasonable.

These procedures are not contractual in nature. Accordingly, the University retains discretion to revise these procedures at any time, and for any reason. The University may apply revisions to an active case provided that doing so is not clearly unreasonable.