

Carnegie Mellon University
**Hearing Procedures for the Adjudication of Other
Prohibited Conduct Involving Faculty Respondents**

This document sets forth the procedures for the Adjudication of Other Prohibited Conduct involving Faculty respondents under section VI.E of the [Carnegie Mellon University Interim Sexual Misconduct Policy](#) (Policy). These procedures will be initiated when the Title IX Coordinator sends an Investigative Report to the Provost, who appoints a Hearing Officer as specified in section VI.E of the Policy.

For any investigation that is pending as of the effective date of the Policy and involves conduct that would be subject to these Procedures under the Policy, the university will use the definitions of prohibited conduct, including sexual harassment and/or sexual assault, that were in effect at the time the violation(s) allegedly occurred. However the matter will be investigated and adjudicated using these procedures.

Last Updated: March 8, 2022

Contents

1. Definitions & Roles.....	2
2. Hearing Preparation and Scheduling	3
3. Advisors.....	4
4. Registration of Witnesses	5
5. Rules of Evidence	5
6. Conduct of the Hearing.....	6
7. Hearing Officer Deliberations and Determination.....	7
8. Rules of Decorum.....	8
9. Appeals.....	9

1. Definitions & Roles

- a. **Title IX Coordinator** – The Title IX Coordinator is responsible for initiating this hearing process after reviewing the Investigative Report and determining that the allegations, if true, would constitute Prohibited Conduct but would not constitute Federal Rule Sexual Misconduct (i.e. “Other Prohibited Conduct”).
- b. **Provost** – The Provost is responsible for appointing a Hearing Officer after receiving an Investigative Report from the Title IX Coordinator. The Provost may also provide or appoint appropriate support staff, including but not limited to a Process Coordinator, to the support the operation of the hearing. If the decision of the Hearing Officer includes a determination that the Respondent is responsible for any of the allegations, the Provost will make a recommendation to the President regarding applicable sanctions and remedies.
- c. **Hearing Officer** – The Hearing Officer is appointed by the Provost. A Hearing Officer may be an employee of Carnegie Mellon or a third party engaged by the university to serve in this role. The Title IX Coordinator and the Investigator for the case may not serve as the Hearing Officer. The Hearing Officer is responsible for presiding over the hearing, making findings of a fact, and making a determination regarding responsibility for each allegation in the Formal Complaint.
- d. **Process Coordinator** – The Process Coordinator serves as the primary administrative coordinator of this process. The Process Coordinator is responsible for scheduling the hearing, providing necessary notices, communications and materials to the parties, and assisting the Hearing Officer in the conduct of the hearing. The Provost (or designee) may appoint additional staff to assist the Process Coordinator, as necessary under the circumstances.
- e. **Formal Complaint** - a written or typed document, signed by the Complainant or the Title IX Coordinator (electronically or otherwise) , which requests that the university initiate special the grievance procedures outlined in Section VI of the Policy.
- f. **Investigative Report** – A report prepared at the conclusion of the investigation of the allegations in the Formal Complaint, as specified in section VI.B of the Policy.
- g. **Complainant** –a person who is reported to have experienced the Prohibited Conduct alleged in the Formal Complainant.
- h. **Respondent** – an individual who is reported to have engaged in Prohibited Misconduct as alleged in the Formal Complaint.
- i. **Advisor** – An individual who provides support and advice for the Complainant or Respondent. The Complainant and Respondent may have an advisor of their choice, who may be, but is not required to be, an attorney. Advisors are not permitted to participate in the proceedings or speak on behalf of the Complainant or Respondent.

2. Hearing Preparation and Scheduling

- a. The Provost will appoint a Hearing Officer who will be responsible for presiding over a live hearing and making findings of fact and determination of responsibility with respect to each allegation in the Formal Complaint.
- b. The logistics of hearing preparation and scheduling will be coordinated by a Process Coordinator designated by the Provost or the Provost's designee.
- c. At least fourteen (14) calendar days in advance of the hearing, the Hearing Officer or Process Coordinator will provide the Complainant, the Respondent, and their respective Advisors with the following:
 - i. Written notice of the identity of the Hearing Officer;
 - ii. A copy of the final Investigative Report prepared under Section VI.B of the Policy;
 - iii. The opportunity to access, upon request, any relevant evidence collected by the university that is not contained in the Investigative Report.

The Investigative Report and any relevant evidence may be used solely for the purpose of preparing for or use during the hearing. These materials are to be kept private and may be shared only with express permission from the Process Coordinator or Hearing Officer. These records may not be duplicated nor utilized for any other purpose.

- d. After the appointment of a Hearing Officer, the Process Coordinator will schedule separate meetings with the Complainant and the Respondent (with their respective Advisors present, if desired) to review the format and procedures for the hearing.
- e. In advance of the hearing, the Hearing Officer will be provided a copy of the Investigative Report and access to any relevant evidence. The Hearing Officer is expected to keep this information confidential.
- f. The Process Coordinator will coordinate with the Complainant, Respondent and Hearing Officer to schedule a hearing. It is the responsibility of the Process Coordinator to ensure that times set for hearings are reasonable. In turn, both the Complainant and Respondent are be expected to demonstrate good faith efforts in relation to the scheduling of the hearing.
 - i. The Process Coordinator will take reasonable efforts to avoid conflicts with the class schedule and/or teaching schedule of the Complainant and/or Respondent when identifying a hearing date and time. When circumstances warrant, class attendance or teaching obligations, except for scheduled examinations, will not be a reasonable excuse for delaying a hearing.

- ii. In the rare circumstance where a party fails to make a good faith effort to cooperate in the scheduling of a hearing, the university (having made reasonable attempts to accommodate the schedule of party) may elect to hold there hearing without the party present. In the case of a Complainant who does not make a good faith effort to cooperate in the scheduling of the hearing, the Title IX Coordinator has discretion to dismiss the case.
 - iii. Either party may request modification of the hearing process as an accommodation for a disability. Requests for accommodation should be submitted to the Process Coordinator at least fourteen (14) days in advance of the hearing. Requests for such accommodation will be referred to either the Office of Disability Resources (for students) or Human Resources Disability Services (for employees).
 - iv. Either party may request that the hearing occur with the Complainant and Respondent located in separate locations, with technology (e.g. video conference) that enables the Hearing Officer and the parties to simultaneously see and hear the party or witnesses answering questions. A request to have the parties participate from separate locations must be submitted at least ten (10) days in advance of the hearing.
- g. The Process Coordinator will notify the Complainant and Respondent of the date and time of the hearing at least fourteen (14) days in advance.

3. Advisors

- a. Both the Complainant and Respondent have the right to have the Advisor of their choice present at the hearing and any pre-hearing meetings conducted under these procedures.
- b. In conjunction with the scheduling of the hearing, the Process Coordinator will ask the Complainant and Respondent whether they have identified an Advisor for the hearing. If a party does not have an Advisor, the Process Coordinator will provide the party with a list of individuals who may be available to serve as an advisor.
- c. Both parties will also be expected to disclose whether their Advisor is an attorney. When the Advisor for one or more of the parties is an attorney, a representative of the University's Office of General Counsel will typically be present at the hearing as legal counsel for the university to advise the Hearing Officer and Process Coordinator. In the event that one party to a case is accompanied by an attorney without advance notice, a hearing may be postponed at the discretion of the Hearing Officer.
- d. Advisors are not permitted to participate in the proceedings or speak on behalf of the Complainant or Respondent. Rather, Advisors are limited to providing advice to the party they are assisting.

4. Registration of Witnesses

- a. Both the Complainant and Respondent have the opportunity to register witnesses to testify at the hearing. Witnesses should be able to provide relevant information related to the alleged violations being reviewed in the hearing, such as direct observation of the incident in question and/or direct interaction with any of the parties before, during or after the incident in question.
- b. Both parties are required to notify the Process Coordinator of their registered witnesses at a date specified by the Process Coordinator that will be at least seven (7) days in advance of the hearing.
- c. The list of registered witnesses may be amended at any time prior to the deadline established by the Process Coordinator to provide notice of registered witnesses.
 - i. The Hearing Officer has right to supplement the registered witness list at any time. Both the Complainant and Respondent will be promptly notified by the Process Coordinator of any changes to the registered witness s list.
 - ii. In scheduling a hearing, if possible, the Process Coordinator will consider the availability of any registered witnesses. If a witness is not available to testify in person, the Process Coordinator may make arrangements for the witness to testify via video conference.

5. Rules of Evidence

- a. Admissible Evidence – Any relevant evidence may be admitted for consideration by the Hearing Officer. For this purpose, “relevant evidence” is any evidence (or a question seeking evidence) that, in the discretion of the Hearing Officer, makes the truth of a material fact more or less probable.
- b. Prior Sexual History / Rape Shield - Questions and evidence about the 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 by the Complainant, 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.
- c. Testimony from an Expert Witness is only admissible as set forth in Appendix B to the Interim Sexual Misconduct Policy. Per Appendix B:
 - i. If an Expert Witness is not available to testify at the live hearing and/or does not testify when called to testify at the live hearing, the Hearing Officer may not

consider any prior statement, testimony, or written report submitted by the Expert Witness in reaching a determination regarding responsibility.

- ii. Except as specified below, the testimony of an Expert Witness may not exceed the scope of the written report, previously submitted by the Expert Witness. The Hearing Officer has sole discretion to determine whether testimony is within the scope of the written report and the Hearing Officer may strike and/or disregard any testimony, where necessary. The Hearing Officer may choose to permit Expert Witness testimony that exceeds the scope of the written report if the Hearing Officer determines that such testimony is necessary to rebut the testimony of another witness.
- d. The Hearing Officer will provide an explanation for any evidence excluded under Section 5a, 5b, or 5c. The Hearing Officer's decisions on evidence are not subject to further objection or argument at the hearing.
- e. Excepted as noted below regarding oral testimony and rebuttal evidence, all evidence that may be used at the hearing must be made accessible to both the Complainant and the Respondent prior to the hearing and available at the hearing. Any new evidence that was not contained in the Investigative Report or otherwise collected during the investigation must be submitted to the Process Coordinator no later than seven (7) days prior to the date of the hearing. The Process Coordinator will review any new evidence with the Title IX Coordinator, who will have discretion to remand the case back to the Investigator for further investigation or to permit the evidence to be considered in the hearing subject to a determination of admissibility by the Hearing Officer under Sections 5a and 5b.
- f. With the exception of (i) oral testimony and (ii) evidence necessary to rebut oral testimony, any new evidence that is presented on the day of the hearing that has not previously been made available to the parties may only be admitted at the discretion of the Hearing Officer.

6. Conduct of the Hearing

- a. Hearings conducted pursuant to these procedures will be conducted live. Hearings may be conducted either (i) with all parties physically present in the same geographic location or (ii) with any or all parties, witnesses, and other participants appearing at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.
- b. All live hearings will be audio recorded and/or transcribed by a court reporter while the hearing is in session. After the Hearing Officer renders a decision, the recording and/or transcript will be available for inspection by the Complainant or Respondent upon written request to the Title IX Coordinator.
- c. While the hearing is in session the parties will be either located in the same room or will participate from separate locations with technology (e.g. video conference) that enables the Hearing Officer and the parties to simultaneously see and hear the party or witnesses answer questions. The parties may be moved to separate locations during breaks in the hearing.

- d. Witnesses may participate either in person or via technology (e.g. video conference) that enables the Hearing Officer and the parties to simultaneously see and hear the witness answer questions.
- e. While the hearing is in session, the Complainant and Respondent have the right to be present either in-person or virtually via technology. The Complainant and Respondent both have the right to remain silent provided that the Hearing Officer may draw a negative inference from the party's decision to refrain from testifying.
- f. At the start of the hearing, the Hearing Officer will provide an introductory statement, which may include a brief summary of these procedures, and the purpose of the hearing.
- g. Opening Statements – Following the introductory statement of the Hearing Officer, the Complainant and Respondent will each be provided ten (10) minutes for an opening statement.
- h. Direct Examination by the Hearing Officer - The majority of the hearing will consist of questioning by the Hearing Officer of the Complainant, Respondent, and any registered witnesses that the Hearing Officer elects to call. The Hearing Officer has discretion to conduct direct examination of the Complainant and Respondent at any time throughout the hearing.
- i. Witnesses - The Hearing Officer will have sole discretion to determine whether to call any of the registered witnesses to testify. The Hearing Officer is not required to call all registered witnesses to testify, although any statements by a witness in the record of the hearing remain subject to Section 5.b.ii. Witnesses called by the Hearing Officer will be questioned one at a time. As specified below, cross examination of a witness will typically occur after the completion of direct examination by the Hearing Officer.
- j. Cross Examination – During the hearing, each party will have the opportunity to propose questions for the Hearing Officer to ask to the other party and to any witnesses. The Hearing Officer will determine whether the proposed question is relevant, under Section 5, before the Hearing Officer asks the question to the party or witness. The Hearing Officer has discretion to refuse to ask any question that the Hearing Officer determines duplicative of prior testimony. The Hearing Officer also has discretion to rephrase proposed questions as the Hearing Officer deems appropriate.
- k. Evidence – The Hearing Officer will provide the Complainant and Respondent the opportunity to enter evidence into the record of hearing and/or to reference evidence contained in the Investigative Report. Subject to Section 5.b., the Investigative Report and all materials contained therein are presumed to be in the record of the hearing.

- l. Closing Statements - Following the completion of all testimony by all parties and witnesses, the Complainant and Respondent will each be provided five (5) minutes for a closing statement.
- m. Following closing statements, the Hearing Officer will conclude the live hearing and the parties will be dismissed. The Hearing Officer will enter deliberations and prepare a written determination as specified in Section 7 of these procedures.

7. Hearing Officer Deliberations and Determination

- a. Hearing Officer Deliberations – Following the conclusion of the hearing, the Hearing Officer will consider all admissible and relevant evidence related to the allegations. The Hearing Officer will make findings of fact and a determination of responsibility with respect to each allegation using the Preponderance of the Evidence standard.
- b. Preparation of Written Determination – The Hearing Officer will prepare a written determination regarding the findings of fact and the determination regarding responsibility for each allegation.
- c. Delivery of Written Determination to the Provost – After completing the written determination, the Hearing Officer will deliver the determination to the Provost.
- d. Recommendation Regarding Sanctions – If the report of the Hearing Officer includes a determination that the Respondent is responsible for any of the allegations, the Provost will make a recommendation to the President regarding applicable sanctions and remedies.
- e. Issuance of Written Determination – The report of the Hearing Officer and, if applicable, the recommendation of the Provost regarding sanctions will be provided to the Complainant, the Respondent, the Title IX Coordinator, and the Office of the President.

8. Rules of Decorum

The Complainant, Respondent, Advisors and Witnesses are expected to follow these rules of decorum. An individual who does not follow these rules will be first be warned by the Hearing Officer. Individuals who repeatedly violate these rules may be removed from the hearing and/or subject to separate disciplinary action.

- a. The Complainant, Respondent, and Witnesses are expected to address all questions, answers and remarks to the Hearing Officer and/or Process Coordinator.
- b. Advisors are not permitted to participate in the proceedings or speak on behalf of the Complainant or Respondent. Rather, Advisors are limited to providing advice to the party they serve.
- c. All parties, Advisors and Witnesses should refrain from interrupting or talking over one another.

- d. The Complainant, Respondent, Advisors, and Witnesses are expected to refrain from the use of profane or vulgar language, unless such language is relevant to the proceeding.
- e. Any participant in the hearing who is not currently involved in direct or cross examination should refrain from making gestures, facial expressions, audible comments, or the like, as manifestations of approval or disapproval during the testimony of witnesses.
- f. Cell phones and tablets should be turned off or in a silent mode. Computers should be used with the audio off.

- g. No audio or video recording is permitted, other than the recording conducted by the university under Section 7.b. Photography is prohibited.

9. Appeals

The written determination of the Hearing Officer may be appealed as set forth in Section VI.E of the Policy.

- a. The Complainant and Respondent may appeal the decision of the Hearing Officer and/or the sanctions recommended by the Provost to the President. An appeal must be submitted in writing to the President within seven (7) calendar days of the notification of the decision to the Complainant and Respondent. The basis for an appeal will be limited to one or more of the following:
 - 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 or dismissal was made, that could affect the outcome of the matter;
 - iii. The Title IX Coordinator, Investigator(s), or Hearing Officer, or Provost 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
 - iv. The sanctions imposed are disproportionate to the finding of responsibility.
- b. Appeals will be adjudicated by the President or the President's designee. The President or the President's designee will issue a written decision describing the result of the appeal and the rationale for the result. The appeal decision will be provided to the Complainant, the Respondent, and the Title IX Coordinator.
- c. Where the Provost recommends sanctions against a Faculty member, the President will take no action on the recommended sanctions until either (i) the completion of any appeal filed by any party (ii) the deadline to file an appeal passes without any appeal being filed. If an appeal is filed, the President or the President's designee will render a decision on the appeal and will issue a written decision describing the result of the appeal and the rationale for the result. The appeal decision will be provided to the Complainant, the Respondent, and the Title IX Coordinator.
- d. If any sanctions remain after the completion of the appeal or where no appeal is filed by the appeal deadline, the President will thereafter render a decision based on both the recommendation of the Provost as well as the underlying findings of fact and

determination(s) of responsibility. If the President decides to initiate the procedure for dismissal for cause or for the imposition of another sanction against a Faculty Respondent, the matter will then follow the process set forth in the subsection "Procedure" of the section of the Appointment and Tenure Policy of Carnegie Mellon University titled, "Dismissal for Cause and Other Sanctions", but will be subject to the "Exceptions" provision of that subsection such that no Ad-Hoc Committee will be required.