

# Carnegie Mellon University

## Hearing Procedures for the Adjudication of Federal Rule Sexual Misconduct

This document sets forth the procedures for the Adjudication of Federal Rule Sexual Misconduct under the Carnegie Mellon Discriminatory and Sexual Misconduct Policy (Interim). These procedures will be used for live hearings in cases where the Title IX Coordinator has determined that the allegation(s), if true, would meet the definition of Federal Rule Sexual Misconduct.

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## 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 Federal Rule Sexual Misconduct. The Title IX Coordinator is also responsible for appointing a Hearing Officer and for providing appropriate support staff, including but not limited to a Process Coordinator, to support the operation of the hearing.
- b. **Hearing Officer** – The Hearing Officer is appointed by the Title IX Coordinator. 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.
- c. **Sanctioning Officer** – The Sanctioning Officer is the official designated by the university to make a determination regarding sanctions, if the Hearing Officer finds a party responsible for a violation of the Policy. The Sanctioning Officer reviews the findings of fact and determination(s) of responsibility made by the Hearing Officer. Based on this review, the Sanctioning Officer determines the appropriate sanctions for the violation.
- 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 Title IX Coordinator 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 its grievance procedures for allegations that, if true, constitute Federal Rule Sexual Misconduct.
- f. **Investigative Report** – A report prepared at the conclusion of the investigation of the allegations in the Formal Complaint.
- g. **Complainant** – a person who is reported to have experienced the Prohibited Conduct alleged in the Formal Complaint.
- 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.

- j. **University Provided Advisor** – An Advisor provided by the university without fee or charge to a party who, for whatever reason, does not have any Advisor present at the live hearing conducted under these procedures. A University Provided Advisor may be, but is not required to be, an attorney. The role of a University Provided Advisor is limited to the conducting of cross examination on behalf of the party that did not have an Advisor present at the hearing.

## 2. Hearing Preparation and Scheduling

- a. The Title IX Coordinator 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. The Title IX Coordinator is responsible for ensuring the Hearing Officer is appropriately trained.
- b. The logistics of hearing preparation and scheduling will be coordinated by a Process Coordinator designated by the Office of Title IX Initiatives.
- c. At least fourteen (14) calendar days in advance of the hearing, the Title IX Coordinator 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 VII.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 Title IX Coordinator. These records may not be duplicated nor utilized for any other purpose.

- d. After receiving notice of the identity of the Hearing Officer, the Complainant and Respondent will have three (3) business days to object to the appointment of the Hearing Officer based on either (i) a conflict of interest or (ii) bias for or against Complainants or Respondents. Any objection must be submitted in writing, not to exceed two (2) pages, by email to the Title IX Coordinator. Any objection filed will be provided to both the Complainant and the Respondent. The Title IX Coordinator will review any objections and will determine whether a new Hearing Officer should be appointed. Both the Complainant and Respondent will be notified of the decision of the Title IX Coordinator.
- e. 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.

- f. 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.
- g. 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 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 the party may elect to hold the 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.

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. The parties will also be notified that if they do not have an Advisor present at the hearing, the university will provide, without fee or charge to that party, a Provided Advisor of the university's choice who may be, but is not required to be, an attorney. Parties are strongly encouraged to notify the Process Coordinator as soon as possible if the party does not have an Advisor or that Advisor will be unable to attend the hearing.
- c. If either party does not have an Advisor present at the live hearing, the university will provide, without fee or charge to that party, a substitute Advisor of the university's choice who may be, but is not required to be, an attorney ("University Provided Advisor"). In this event, the role of the University Provided Advisor will be limited to the conducting of cross examination on behalf of the party who did not have an Advisor.
- d. 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.
- e. Except as specified in Section 7.j, regarding Cross Examination, 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 the 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 – Except as noted below, 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.

Testimony from an Expert Witness is only admissible as set forth in [Appendix B to the Discriminatory and Sexual Misconduct Policy](#).

- c. The Hearing Officer will provide an explanation for any evidence excluded under Section 5a, 5b, or 5c. Such explanation may be provided orally during the course of the hearing or in writing in response to a request filed under to Section 6. The Hearing Officer’s decisions on relevance at the hearing are not subject to further objection or argument at the hearing.
- d. Except 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.
- e. 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. Pre-Hearing Decisions on the Relevance of Evidence**

- a. The Complainant and Respondent each have the option to request that the Hearing Officer make a ruling on the relevancy of any evidence under Section 5 at any time up to five (5) business days prior to the hearing. The Hearing Officer will have the sole discretion to rule on any such request prior to the start of the hearing or to defer a ruling until such a time that the issue arises during the course of the hearing. Filing such requests is optional and neither party will be prevented from raising an evidentiary issue during the course of the hearing because such party did not file the request in advance of the hearing.
- b. Any request for a pre-hearing decision on the relevancy of evidence must be filed via email to both the Hearing Office and the Process Coordinator. A copy of the request will be sent by the Process Coordinator to the other party and their Advisor, who may file a response within two (2) business days.
- c. A request for a pre-hearing decision on the relevancy of evidence may not exceed two pages or 1,000 words without advance written permission from the Hearing Officer.
- d. If the Hearing Officer decides to rule on a request prior to the start of the hearing, both parties will be notified of the ruling simultaneously (typically via email) by either the Hearing Officer or the Process Coordinators. The Hearing Officer may also elect to announce the ruling at the beginning of the hearing. The Hearing Officer may also defer the ruling until such a time that the issue arises during the course of the hearing.
- e. During the course of a hearing, the Hearing Officer has the discretion to reconsider a previous ruling on a request for a pre-hearing decision on the relevancy of evidence. The Hearing Officer must provide an explanation for the new decision.

## **7. 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 transcription 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. Witnesses who do not appear in person will not be permitted to testify via audio only.
- 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.
- f. At the start of the hearing, the Hearing Officer will provide an introductory statement, which may include a brief summary of these procedures, the purpose of the hearing, and notice of any rulings on previously filed under Section 6.
- 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. 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

- i. During the hearing, each party will be given the opportunity to have the party's advisor ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility (cross examination).
- ii. Only relevant cross examination and other questions may be asked of a party or witness. Before the Complainant, Respondent, or a witness answers a cross examination question, the Hearing Officer must first determine whether the question is relevant and explain any decision to exclude a question as not relevant under Section 5a or Section 5b.
- iii. Typically, cross examination will occur after the Hearing Officer questions the party or witness. However, the Hearing Officer has discretion to determine at what time during the hearing a party or witness will be subject to cross examination. For example, the Hearing Officer may defer the cross examination of the Complainant and Respondent to the end of the hearing, after the completion of all witness testimony.
- iv. When cross examining a party or witness, the Advisor will not repeat or echo the answer given by the party or witness. The Advisor's participation shall be limited solely to asking questions.

- 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. (regarding exclusions from evidence) 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 8 of these procedures.

## **8. 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. Consultation with Sanctioning Officer – If the Hearing Officer determines that the Respondent is responsible for any allegation, the Hearing Officer will contact the Sanctioning Officer to review the findings of fact and determination(s) regarding responsibility. The Sanctioning Officer will have the sole responsibility for determining the appropriate sanctions and remedies related to any finding of responsibility made by the Hearing Officer. The Sanctioning Officer will provide a written determination regarding sanctions to the Hearing Officer. If the Hearing Officer determines that the Respondent is not responsible for all of the allegations, the Sanctioning Officer will not be contacted.
- c. Prior Disciplinary Records – If the Respondent has a prior disciplinary record and is found responsible by the Hearing Officer, the Sanctioning Officer may consider the prior disciplinary record in determining the appropriate sanctions.
- d. 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. Where applicable, the written decision of the Sanctioning Officer regarding sanctions and remedies will be attached to or incorporated into the written determination prepared by the Hearing Officer. The written determination prepared by the Hearing Officer must include:
  - i. Identification of the allegations potentially constituting Prohibited Conduct and/or Federal Rule Sexual Misconduct;
  - ii. A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
  - iii. Findings of fact supporting the determination;
  - iv. Conclusions regarding the application of the Policy and other relevant university Policies to the facts;
  - v. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions on the Respondent determined by the Sanctioning Officer, and whether remedies designed to restore or preserve equal access to the university's education program or activity will be provided to the Complainant;
  - vi. A summary of the procedures and a list of the permissible grounds for the Complainant and Respondent to appeal is provided under Section VII.D of the Policy.
- e. Delivery of Written Determination to Title IX Coordinator – After completing the written determination, the Hearing Officer will deliver the determination to the Title IX Coordinator. The Title IX Coordinator or designee will review the written determination to confirm that it

contains all the elements required by Section 8.d. of these Procedures. The Title IX Coordinator may send the written determination back to the Hearing Officer to provide any missing information required by Section 8.d.

- f. Issuance of Written Determination – The Title IX Coordinator or designee is responsible for providing the Complainant and Respondent with a copy of the written determination. Both parties must be provided the written determination simultaneously.
- g. A copy of the written determination will also be provided to the following department based on the affiliation of the Respondent:
  - i. For student Respondents – the Office of Community Responsibility;
  - ii. For staff Respondents – the Division of Human Resources and the department where the staff member is employed.
  - iii. For Faculty Respondents – the Office of the President.

## **9. 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 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, Advisors, and Witnesses are expected to address all questions, answers and remarks to the Hearing Officer and/or Process Coordinator, except as necessary for advisors to conduct cross examination.
- b. Except as specified in Section 7(j) regarding Cross Examination, 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.

## **10. Appeals**

- a. Both the Complainant and Respondent have the right to file an appeal of the Hearing Officer's determination and/or Sanctioning Officer's decision. An appeal must be submitted in writing to the Office of the President (with a copy to the Title IX Coordinator) within seven (7) calendar days of the official notification of the determination under Section 8 of these hearing procedures. The written appeal request must state the basis for the appeal. 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 Sanctioning Officer 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. The President or the President's designee will serve as the Appeal Officer. The Appeal Officer will inform the other party or parties that an appeal has been filed and provide such party or parties with a copy of the written appeal. The non-appealing party will have a reasonable, equal opportunity to submit a responsive written statement for consideration by the Appeal Officer.
- c. The Appeal Officer will review the written appeal and any response and determine whether, in the judgment of the Appeal Officer, sufficient grounds exist for at least one basis of appeal. An appeal that does not meet at least one of the acceptable bases for appeal may be dismissed without further review.
- d. The Appeal Officer has the authority to modify the decision as deemed appropriate for resolution of the matter being appealed, which could entail (i) sending the matter back to an Investigator, the Hearing Officer, or a new Hearing Officer, as necessary to remedy the error or (ii) a decrease or change to the nature of the sanction(s).
- e. The Appeal Officer will issue a written decision describing the result of the appeal and the rationale for the result. The Appeal Officer will provide the written decision simultaneously to both the Complainant and Respondent. The IEX Office will also receive a copy of the decision.
- f. The determination regarding responsibility becomes final either on the date that the written determination of the result of the appeal is provided to the parties or, if an appeal is not filed, the date on which an appeal would no longer be considered timely.

## **11. Additional Procedures for Sanctions Against Faculty Respondents**

- a. Consistent with Section VI.E of the Discriminatory and Sexual Misconduct Policy, the following additional procedures apply to Faculty Respondents.
- b. In the case of sanctions against a Faculty Respondent, the sanctions determined by the Sanctioning Officer for Faculty will be provided to the President as recommended sanctions. The President will take no action on the sanctions until either (i) the completion of any appeal or (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. 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 Sanctioning Officer for Faculty as well as the underlying findings of fact and determination(s) of responsibility by the Hearing Officer (or Appeal Officer, if applicable).
- c. 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.