

Carnegie Mellon University

Hearing Procedures for the Adjudication of Discriminatory and Sexual Misconduct

This document sets forth the procedures for the live hearings conducted under Section VI.E of the Carnegie Mellon University Discriminatory and Sexual Misconduct Policy ([Interim](#)) (the “Policy”).

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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 finding no basis for dismissal. The Title IX Coordinator is 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 Hearing Officer is responsible for presiding over the hearing, making findings of fact, and making a determination regarding responsibility for each allegation in the Notice of Allegations.
- c. **Sanctioning Officer** – The Sanctioning Officer is the official designated by the university to make a determination regarding Disciplinary 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 Disciplinary Sanctions and Remedies for the violation. If the individual appointed as the Hearing Officer is an employee of the university, the same individual may be appointed as the Sanctioning Officer.
- 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. **Complaint** – Under these Procedures, the allegations filed under Section VI.A of the Policy, subject to any changes to the allegations during the course of the investigation under Sections VI.B (Dismissals) or Section VI.C (Investigation Procedures). The allegations of the Formal Complaint are set forth in the current Notice of Investigation applicable to the matter.
- f. **Investigative Report** – A report prepared at the conclusion of the investigation of the allegations in the Formal Complaint, as specified in Section VI.C of the Policy.

All other defined terms, indicated by capitalization, have the meaning assigned in the Policy.

2. Hearing and Scheduling

- a. Typically, the process for scheduling a hearing will begin after the Office for Institutional Equity and Title IX has issued a draft investigative report to the parties under Section VI.C of the Policy. However, the Title IX Coordinator has discretion to begin coordinating with the parties to schedule a date for an anticipated hearing at any time during pending grievance procedures.
- b. 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 Notice of Allegations. The Title IX Coordinator is responsible for ensuring the Hearing Officer is appropriately trained and free of conflict of interest or bias, including bias for or against Complainants or Respondents generally, or a specific Complainant or Respondent.
- c. The logistics of hearing preparation and scheduling will be coordinated by a Process Coordinator designated by the Office for Institutional Equity and Title IX.
- d. 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. However, 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 such cases, the party will still be provided with notice all notices under Section 2e and the party will be permitted to join the hearing at any point.
 - iii. As noted in the Policy, either party may request reasonable accommodations to enable their participation in the grievance procedures. This includes, where warranted, reasonable modification of the hearing process. 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).
- e. At least ten (10) 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 date and time of the hearing;
- ii. The location of the hearing, including whether the hearing will be held virtually via an on-line forum;
- iii. The identity of the Hearing Officer and Process Coordinator;
- iv. A copy of the Investigative Report prepared under Section VI.C of the Policy;
- v. 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 must be kept confidential as detailed in Section 9 of these hearing procedures.

- f. 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 generally, or the specific Complainant or Respondent. 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.
- g. In advance of the hearing, the Hearing Officer will be provided a copy of the Investigative Report and access to any Relevant evidence not already included in the Investigative Report.
- h. If the matter involves more than one Respondent, the university, in its discretion, may permit the hearing concerning each Respondent to be conducted either jointly or separately.

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 can assist the party in identifying individuals who may be available to serve as an Advisor.
- c. Both parties are required 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. Except as noted in 3(e), below, 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.
- e. In rare cases, the permitted role of an Advisor may be modified as necessary to comply with applicable law or contractual obligations, such as the terms of a collective bargaining agreement. In all cases, the applicable rules for Advisors will apply equally to the Complainant and the Respondent. The parties will be notified of any changes to the permitted role of Advisors fourteen (14) days in advance of the date of the hearing. In such cases, if a party does not identify an Advisor who will be present at the hearing for the modified purposes, the university will select and provide without fee or charge an Advisor, who may be, but is not required to be, an attorney.

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.
- 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 notified by the Process Coordinator of any changes to the registered witness list;

In scheduling a hearing, if possible, the Process Coordinator will consider the availability of any registered witnesses.

5. Rules of Evidence

- a. Admissible Evidence –Any Relevant (and not otherwise impermissible) evidence may be admitted for consideration by the Hearing Officer.
- b. Testimony from an Expert Witness is only admissible as set forth in Appendix B to the Policy.
- c. The Hearing Officer will provide an explanation for any evidence excluded under Section 5.a, 5.b, or 5.c. Such explanation may be provided orally during the course of the hearing or in writing in response to a request filed under 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 at the hearing subject to a determination of admissibility by the Hearing Officer under Sections 5.a and 5.b.
- 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 Officer 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 Coordinator. 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. Decisions about the format of the hearing (in-person or virtual) are in the sole discretion of the university.
- b. All live hearings will be audio recorded and/or transcribed while the hearing is in session. After the decision of the Hearing Officer is issued (per section 8f below), the recording and/or a transcription will be available for inspection by the Complainant or Respondent upon written request to the Office for Institutional Equity and Title IX.
- c. 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 request under Section 6.
- d. 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 if they wish to provide one.
- e. 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.
- f. 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.
- g. Cross Examination
 - i. During the hearing, each party will have the opportunity to propose questions for the Hearing Officer to ask the other party and to any witnesses. Before the Hearing Officer asks the proposed question of the party or witness, the Hearing Officer must determine whether:
 - the proposed question is Relevant and not impermissible, under Section 5; and

- the proposed question is unclear or harassing of the party or witness being questioned.
- ii. The Hearing Officer must explain any decision to exclude a proposed question as not Relevant or otherwise impermissible.
- iii. If the Hearing Officer determines that the proposed question is unclear or harassing of the party or witness being questioned, the Hearing Officer must give the party proposing the question an opportunity to clarify or propose a new question.
- iv. The Hearing Officer has discretion to refuse to ask any question that the Hearing Officer determines to be duplicative of a prior question asked by the hearing officer or another party.
- v. 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.
- vi. Except as may be modified pursuant to Section 3.e of these procedures, Advisors are not permitted to ask or propose cross examination questions. All proposed cross examination questions must be submitted by the Complainant or Respondent.
- h. Both parties have the right to decline to answer questions or otherwise participate during a hearing. However, the Hearing Officer may choose to place less or no weight upon statements by a party or witness who refuses to respond to questions deemed Relevant and not impermissible. The Hearing Officer must not draw an inference about whether Prohibited Conduct occurred based solely on a party's or witness's refusal to respond to such questions.
- i. If a party or witness, after being provided notice, does not appear at the hearing, the hearing will take place in their absence. In such a case, or in the event that a party or witness appears at the hearing but refuses to answer questions, the Hearing Officer will make a determination using the evidence available. The Hearing Officer may choose to place less or no weight upon statements by a party or witness who refuses to respond to questions deemed Relevant (and not otherwise impermissible). The Hearing Officer must not draw an inference about whether Prohibited Conduct occurred based solely on a party's or witness's refusal to respond to questions.

- j. Evidence – The Hearing Officer will provide the Complainant and Respondent the opportunity to enter Relevant evidence into the record of the 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.
- k. 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 if they choose to do so.
- l. 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 Relevant, admissible evidence.
 - i. The Hearing Officer will assess the credibility of the parties and witnesses, to the extent credibility is both in dispute and Relevant to evaluating the allegations. Any credibility determinations will not be based on a person's status as a Complainant, Respondent, or witness.
 - ii. 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.
 - iii. If a party or witness, after being provided notice, does not appear at the hearing, the hearing will take place in their absence. In such a case, or in the event that a party or witness appears at the hearing but refuses to answer questions, the Hearing Officer will make a determination using the evidence available. The Hearing Officer may choose to place less or no weight upon statements by a party or witness who refuses to respond to questions deemed Relevant (and not otherwise impermissible). The decisionmaker must not draw an inference about whether Prohibited Conduct occurred based solely on a party's or witness's refusal to respond to questions.
 - iv.
- b. Consultation with Sanctioning Officer – If the Hearing Officer determines that the Respondent is responsible for any allegation, the Hearing Officer will contact the appropriate 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 Disciplinary Sanctions and Remedies related to any finding of responsibility made by the Hearing Officer. The Sanctioning Officer will provide a written determination regarding Disciplinary Sanctions and Remedies 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 Disciplinary 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 Disciplinary Sanctions and whether Remedies are to be provided 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. A description of the alleged Prohibited Conduct;
 - ii. Information of the procedures in the Discriminatory and Sexual Misconduct Policy and any other applicable policy or procedure used by the Hearing Officer;
 - iii. The Hearing Officer’s evaluation of the Relevant and not otherwise impermissible evidence and determination whether Prohibited Conduct occurred;
 - iv. Any applicable Disciplinary Sanctions or Remedies, subject to the requirements of Section VI.E of the Policy regarding the application of the Family Educational Rights and Privacy Act to certain categories of Prohibited Conduct; and
 - v. The appeal procedures under Section VI.F 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 Provost and 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 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.
- b. Except as may be modified by Section 3.e of these procedures, 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. If a hearing is to be conducted virtually, rather than live/in-person, parties are expected to be “cameras on” at all times, and “microphones on” when speaking.
- f. Cell phones, tablets, and other electronic devices should be turned off or in a silent mode while the hearing is in session.
- 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

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