

# Sexual Misconduct Policy (Interim)

*Effective August 1, 2024, the university adopted an Interim Sexual Misconduct Policy that supersedes and replaces this Policy.*

<b>Policy Title</b>	Sexual Misconduct Policy (Interim)
<b>Policy Owner</b>	Provost
<b>Responsible Office</b>	Office for Institutional Equity and Title IX
<b>Contact Information</b>	Questions about policy content and process, as well as any reports of alleged violations of this policy may be directed to the <a href="#">Office for Institutional Equity and Title IX</a> .
<b>Pertinent Dates</b>	Effective August 14, 2020; updated March 10, 2022; administrative updates were made on January 3, 2024
<b>Approved By</b>	This Policy was approved by the president on July 28, 2020 based on the recommendation of the University Leadership Council. This policy replaces and supersedes the university's Sexual Harassment and Sexual Assault Policy that was adopted on April 11, 2013.
<b>Entities Affected by this Policy</b>	All units of the university

<b>Who Needs to Know about this Policy</b>	All students, staff and faculty
<b>Definitions</b>	See Definitions in Section IX of this Policy
<b>Related Policies and Procedures</b>	<ul style="list-style-type: none"> <li>○ Hearing Procedures for the Adjudication of Federal Rule Sexual Misconduct [pdf]</li> <li>○ Hearing Procedures for the Adjudication of Other Prohibited Conduct Involving Faculty Respondents [pdf]</li> <li>○ Statement of Assurance</li> <li>○ Policy Against Retaliation</li> <li>○ Consensual Intimate Relationship Policy Regarding Undergraduate Students</li> <li>○ 2013 Policy Against Sexual Harassment and Sexual Assault</li> </ul>
<b>Abstract</b>	This Policy defines prohibited sexual misconduct and describes procedures for reporting concerns or allegations, investigating and adjudicating allegations and taking disciplinary or other corrective actions when a violation is found to have occurred.

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## I. Policy Statement

The mission of Carnegie Mellon University is to cultivate a transformative educational experience for its students that is committed to promoting and safeguarding their personal health and well-being. In addition, the mission is to create a collaborative environment open to the free exchange of ideas, where research, creativity, innovation, and entrepreneurship can flourish and where individuals can achieve their full potential. It is the policy of Carnegie Mellon University to maintain an academic and work environment that promotes the confidence to work, study, innovate and perform without fear of sexual misconduct. Such misconduct diminishes individual dignity, is contrary to the values of the university and is a barrier to fulfilling the university's mission. It will not be tolerated at Carnegie Mellon University.

It is the responsibility of every member of the University Community to foster an environment free of sexual misconduct. All members of the University Community are encouraged to take reasonable and prudent actions to prevent or stop such behavior.

The Interim Sexual Misconduct Policy (“Policy”) prohibits the types of misconduct listed below and defined in Section IX (also referred to collectively as “Prohibited Conduct”):

- Sexual Assault;
- Sexual Exploitation;
- Sexual Harassment;
- Stalking;
- Dating Violence;
- Domestic Violence;
- Retaliation; and
- Violation of Protective Measures.

This Policy is intended to: (1) prevent, eliminate and remedy the effects of Prohibited Conduct; (2) foster an environment where all individuals are well-informed and supported in reporting Prohibited Conduct; and (3) provide a prompt, fair and impartial process for all parties once the university is made aware of possible Prohibited Conduct. While these principles are clear and straightforward, the detailed procedures set forth in this Policy are necessary to assure that these matters are handled in an impartial, thoughtful and thorough manner, consistent with the university’s dedication to the integrity of its process.

Furthermore, on May 19, 2020, the Department of Education issued a Final Rule under Title IX of the Education Amendments of 1972 with an effective date of August 14, 2020. The Final Rule governs how certain acts of sexual misconduct are defined under Title IX and sets forth the procedures and other requirements for adjudicating claims of such conduct (the “Final Rule”). For purposes of this Policy, the conduct described in the Final Rule shall be referred to as “Federal Rule Sexual Misconduct.” Federal Rule Sexual Misconduct is defined as follows:

- **Federal Rule Sexual Misconduct** — A subset of Prohibited Conduct that rises to a level of severity and pervasiveness such that it is prohibited expressly by the Final Rule. Prohibited Conduct meets the definition of Federal Rule Sexual Misconduct when:
  - A Faculty member or Staff member conditions the provision of an aid, a benefit, or a service on another Faculty member, Staff member, Student, or third party's participation in unwelcome sexual conduct (commonly known as Quid Pro Quo);
  - A Faculty member, Staff member, Student or third party engages in unwelcome conduct on the basis of sex that is so severe, pervasive, and objectively offensive that it effectively denies another person equal access to the University's Programs or Activities (commonly known as Sexual Harassment); or
  - A Faculty member, Staff member, Student or third party engages in Sexual Assault, Dating Violence, Domestic Violence or Stalking.
- Alleged conduct is Federal Rule Sexual Misconduct (though it may still be Prohibited Conduct) only if:
  - The alleged conduct was perpetrated against a person in the United States; and
  - The conduct took place within the University's Programs and Activities.
- Conduct that does not meet this strict definition for Federal Rule Sexual Misconduct is still prohibited by this Policy if it otherwise constitutes Prohibited Conduct (also referred to as "Other Prohibited Conduct").

Faculty, Staff, Students, or third parties who violate this Policy may face, as appropriate, disciplinary action up to and including termination, expulsion, or other actions.

Nothing in this Policy shall be construed to abridge the free expression of ideas that is essential to the university's mission. The discourse conducted in accordance with the university's [Freedom of Expression Policy](#) and with the statement on Academic Freedom and Responsibility enunciated in the [Appointment and Tenure Policy](#), whether in written, spoken, or electronic forms, shall be consistent with this Policy.

This Policy is intended to meet the university's obligations under Title VII of the Civil Rights Act of 1964 ("Title VII"); Title IX of the Education Amendments of 1972 ("Title IX"); the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act ("Clery Act"), as amended by the Violence Against Women Reauthorization Act of 2013 ("VAWA"), with respect to its application to sexual misconduct; and other applicable law and regulations.

## II. Jurisdiction

This Policy applies to Faculty, Staff, Students, and third parties. This Policy covers acts of Prohibited Conduct committed by or against Students, Faculty, Staff, and third parties when the Prohibited Conduct occurs:

- In a University Program or Activity, including, but not limited to,
  - conduct that occurs on a university campus or other property owned or controlled by the university;
  - in the context of university employment; or
  - in the context of university-sponsored study abroad, research, field work, practica, or internship programs; or
- Outside of a University Program or Activity,
  - but poses a serious threat of harm,
  - has a continuing adverse effect on, or impedes equal access to educational programs or activities, or
  - creates a hostile environment for Students, Faculty, Staff, or third parties.

The university retains discretion to determine whether out-of-program conduct is within its jurisdiction. In making this determination, including off-campus or online conduct that is not part of a University Program or Activity, the university will consider the severity of the alleged conduct, the risk of ongoing harm, whether both parties are members of the University Community, impact on University Programs or Activities, and whether off-campus conduct is part of a series of actions that occurred both on and off campus.

This Policy supersedes any conflicting information in any other university policies with respect to the definitions or procedures relating to Prohibited Conduct.

## III. Prohibited Conduct

Prohibited Conduct under this Policy includes the following specifically defined forms of behavior: Sexual Assault, Sexual Exploitation, Sexual Harassment, Stalking, Dating Violence, Domestic Violence, Retaliation, and Violation of Protective Measures. Whether someone has engaged in Prohibited Conduct under this Policy will be assessed under a Reasonable Person standard.

Some Prohibited Conduct, like certain sex based crimes, unwelcome conduct that is sufficiently severe and pervasive, and conduct that conditions an aid or benefit on unwelcome sexual activity, may also constitute Federal Rule Sexual Misconduct.

Some forms of conduct which may be considered inappropriate or unacceptable within the Carnegie Mellon community, such as incivility or bullying, may not meet the definition of Prohibited Conduct under this Policy. However, the university retains discretion to report the conduct to an internal university department or authority such as Human Resources, Office of Community Standards and Integrity, or relevant academic department or dean to determine and implement appropriate responsive action, including review for possible misconduct under other university policies.

## IV. Reporting

The university strives to create an environment where all members of the Carnegie Mellon community are aware of options for informing the university about instances of suspected Prohibited Conduct, how to seek assistance and support, and how to pursue university action for their own protection and that of the entire campus community. This Policy distinguishes the action of reporting from filing a Formal Complaint. Thus, information shared about suspected Prohibited Conduct does not automatically trigger formal action or an investigation, as discussed below in Section VI.B. This section outlines the mechanisms for reporting and how the university will respond to information it receives.



Some forms of Prohibited Conduct may also constitute crimes. The university also strongly encourages any individual who experiences, witnesses, or learns of possible criminal conduct to report them to the University Police Department or local law enforcement. Prompt reporting allows law enforcement to collect and preserve evidence.

- *To report in person:*
  - Office for Institutional Equity and Title IX/Title IX Coordinator  
4615 Forbes Avenue,  
Suite 330  
Pittsburgh, PA 15213
- *To report by phone or email:*
  - Please call 412-268-7125 or email [tix@andrew.cmu.edu](mailto:tix@andrew.cmu.edu)
- *To report online, including anonymously:*
  - Please go to [cmu.ethicspoint.com](http://cmu.ethicspoint.com) or call 844-587-0793.
- *To report possible criminal conduct:*
  - University Police Department  
300 South Craig Street  
Pittsburgh, PA 15213  
412-268-2323  
[campuspd@andrew.cmu.edu](mailto:campuspd@andrew.cmu.edu)

The university maintains a [Resource Guide](#) for individuals who file reports of Prohibited Conduct that provides information for community members about filing reports of Prohibited Conduct through the university's policies, support resources, community resources, and how to support a friend or family member who has been impacted by such conduct. Individuals who report Prohibited Conduct in Pennsylvania will also be informed of their [rights as a victim of a crime under Pennsylvania law](#).

## A. How to Make a Report

Any individual, including Complainants, Students, Faculty, Staff, or third parties are encouraged to submit reports of suspected Prohibited Conduct directly to the [Office for Institutional Equity and Title IX](#) in-person, via email, phone call, or online. Reports can also be made to the university officials listed in Section VIII who are designated with the authority to institute corrective measures.

The university encourages all members of the Carnegie Mellon community to report to the Title IX Coordinator any information they learn about Prohibited Conduct. Sharing information of concern enables the university to offer support to impacted parties and protects the community from continuance of the alleged misconduct. Third parties should note that a report about possible Prohibited Conduct, including Federal Rule Sexual Misconduct, does not alone trigger a formal resolution process. Instead, as further explained in Section VI.A, a Formal Complaint must be filed in order for the formal investigation and resolution process to commence.

Certain employees identified as Responsible Employees **must** report information to the Title IX Coordinator so that the university can offer support and resolution options to the Complainant. These individuals are listed in Section VIII along with additional information regarding their obligations.

Upon receipt of a report, the university will promptly contact the Complainant to discuss appropriate Supportive Measures (see Section V.A) and to explain the process for filing a Formal Complaint (see Section VI.A). Complainants are not obligated to respond to outreach from the university and the university will respect this decision, with limited exceptions where it is obligated by law or to act in the safety interest of the community.

## B. Anonymous Reporting

An individual who is not a Responsible Employee may make a report of Prohibited Conduct to the Title IX Coordinator, and if preferred, may do so without disclosing one's name using the online reporting form listed above and here:

- [cmu.ethicspoint.com](https://cmu.ethicspoint.com)

Depending on the level of information available about the incident or the individuals involved, the university's ability to respond to an anonymous report may be limited. The university will, however, take whatever steps it deems appropriate and in the best interests of the overall University Community, consistent with the information available. The university will never refuse to respond a report solely on the grounds that it was made anonymously.

Information collected through the anonymous reporting line will be shared only with necessary university officials in order to respond to the reported concern. Information is kept confidential and no personally identifiable information is shared, except as necessary to follow this Policy, without the party's consent.

## C. Reports to Law Enforcement

An individual who experiences, witnesses, or learns of possible criminal conduct may contact law enforcement directly by calling:

- 911 (for emergencies off-campus)
- University Police Department  
300 South Craig Street  
Pittsburgh, PA 15213  
(412) 268-2323 (for emergencies on-campus)  
[campuspd@andrew.cmu.edu](mailto:campuspd@andrew.cmu.edu)

# V. How the University Responds to Reports

## A. Supportive Measures

The university is committed to helping Complainants continue their education and employment after experiencing Prohibited Conduct. Regardless of whether a person chooses to pursue an investigation, alternative resolution, a formal resolution, or chooses not to pursue any further process, the Title IX Coordinator or a designated university official conducts an initial assessment to determine next steps and will initiate contact to discuss the availability of Supportive Measures.

Supportive Measures are non-disciplinary, non-punitive individualized services, accommodations, and other assistance that the university offers and may put in place, without fee or charge, after receiving notice of possible Prohibited Conduct. Supportive Measures are designed to restore or preserve access to the University's Programs and Activities, protect the safety of all parties and the university's educational environment, or

deter Prohibited Conduct, while not being punitive in nature or unreasonably burdening either party.

Supportive Measures are available regardless of whether the matter is reported to the university for the purpose of initiating a formal resolution under this Policy and before, after, and regardless of whether a Formal Complaint is filed.

A Complainant who requests Supportive Measures retains the right to file a Formal Complaint, either at the time the Supportive Measure is offered or requested or at a later date. Any Complainant that requests Supportive Measures will be informed in writing of their right to simultaneously or subsequently file a Formal Complaint pursuant to this Policy.

Upon receipt of a report, the Title IX Coordinator, or their designee, will contact the Complainant (1) to discuss the availability of Supportive Measures and (2) to explain that Supportive Measures are available with or without the filing of a Formal Complaint. The Title IX Case Manager helps determine the appropriate Supportive Measure(s) to be implemented. The Title IX Case Manager will assess with the Complainant the unique facts and circumstances of their situation and identify steps to help the individual meet their educational or employment expectations. The Title IX Coordinator, or their designee, will serve as the point of contact for implementing any identified measures to ensure the burden of implementation does not fall on the recipient of the Supportive Measures. Supportive Measures will not be disciplinary or punitive in nature and will not unreasonably burden, or unreasonably interfere with the educational pursuits of, either party. Whether a possible Supportive Measure would unreasonably burden either party is a fact-specific determination that takes into account the nature of the educational programs, activities, opportunities and benefits in which an individual is participating.

Supportive Measures may also be requested by and made equally available to Respondents, witnesses, and other impacted members of the University Community.

Examples of Supportive Measures include:

- Academic support services and accommodations, including the ability to reschedule classes, exams and assignments, transfer course sections, or withdraw from courses;
- Academic schedule modifications (typically to separate Complainant and Respondent);
- Work schedule or job assignment modifications (for university employment);
- Changes in on-campus work or university housing location;
- On-campus counseling services and/or assistance in connecting to community-based counseling services;
- Assistance in connecting to community-based medical services;
- No contact agreements (agreements between parties to stop all attempts at communication or other interaction with one another);
- Temporarily limiting an individual's access to certain university facilities or activities;
- Work schedule or job assignment modifications,
- Information about and/or assistance with obtaining personal protection orders;
- Leaves of absences;
- Increased monitoring and security of certain areas of the campus;
- Individualized limitations on the parties' communications and interactions with each other; or
- A combination of any of these measures.

The university will maintain Supportive Measures provided to the Complainant or Respondent as confidential to the extent that maintaining such confidentiality would not impair the university's ability to provide the Supportive Measures.

## B. Support and Resources

All members of the Carnegie Mellon community may seek support and access resources on and off-campus that are available at no cost. The Office for Institutional Equity and Title IX can assist individuals in accessing these resources or individuals may contact the departments or organizations directly.

Some of these resources are designated as confidential. Other resources provide support, but may need to involve the Title IX Coordinator and/or the University Police Department. Regardless of whether the university determines that Prohibited Conduct occurred, the university will offer resources or assistance to Complainants, Respondents, witnesses, and

other impacted community members after receiving notice of alleged Prohibited Conduct. The university will also assist those individuals in identifying and contacting external law enforcement agencies and community resources, when desired by the individual.

## 1. Confidential Resources

Carnegie Mellon understands that some individuals impacted by Prohibited Conduct, particularly conduct involving sexual violence, may not be ready or may not be willing to report through a channel that may lead to an investigation or other university action, no matter how discreet. For such individuals, Carnegie Mellon maintains several confidential reporting options.

These resources can provide individuals with assistance, support, and additional information. Confidential Resources are prohibited from disclosing confidential information unless (1) given permission by the person who disclosed the information; (2) there is an imminent threat of harm to self or others; (3) the conduct involves suspected abuse of a minor under the age of 18; or (4) as otherwise required or permitted by law or court order. Confidential Resources may be required to report non-identifying information to CMUPD for crime reporting purposes.

## 2. Campus Resources

- a. [Counseling and Psychological Services \(CaPS\)](#) (Student only)  
412-268-2922
- b. [University Health Services](#) (Student only)  
412-268-2157
- c. [Employee Assistance Program \(Employees only\)](#)

## 3. Community Resources

- a. [Women's Shelter and Center of Greater Pittsburgh](#)
- b. [Pittsburgh Action Against Rape](#)
- c. [Center for Victims](#)
- d. [Persad](#)

# VI. How a Complaint is Resolved

## A. Filing a Formal Complaint

A Complainant who chooses to pursue an alternative or formal resolution to address any reported Prohibited Conduct must begin by filing a Formal Complaint with the Office for Institutional Equity and Title IX. Filing a Formal Complaint will initiate an investigation pursuant to the university's process outlined in Section VI.B below. The university will not commence a formal investigation or its resolution process without the Complainant or the Title IX Coordinator filing a Formal Complaint.

A Complainant may file a Formal Complaint with the Title IX Coordinator in person, by mail, or by email with submission of a Formal Complaint Form [pdf]. The Formal Complaint must contain the Complainant's physical or digital signature otherwise indicate that the Complainant is the person filing (if the Complainant is under the age of 18 and not enrolled in an undergraduate or graduate program, the University will ordinarily also contact the Complainant's parent or guardian, as permitted by law, to explain the process for filing a Formal Complaint).

A Complainant may file a Formal Complaint at any time, but significant delays between the time an incident occurs and conducting an investigation may impede or limit the availability of relevant material and/or availability of witnesses.

In certain circumstances, the Title IX Coordinator may file a Formal Complaint.

Whether the university will begin an investigation in response to a report under these circumstances depends on a number of factors, including but not limited to the wishes of the Complainant, the nature and scope of the alleged Prohibited Conduct, the risk posed to any individual or to the campus community by not proceeding, and/or the University's determination about whether its legal obligations compel it to pursue the resolution of a report.

After a Formal Complaint has been filed, or signed by the Title IX Coordinator, the university will commence its investigation and resolution process. In order for the

allegations set forth in a Formal Complaint to constitute Federal Rule Sexual Misconduct, at the time of filing a Formal Complaint, the Complainant must be participating in or attempting to participate in the University's Programs or Activities. If the Complainant is not participating in or attempting to participate in the University's Programs or Activities at the time the Formal Complaint is filed, the Title IX Coordinator will review the Formal Complaint and determine whether to initiate an investigation of Other Prohibited Conduct, as specified in Section VI.B below.

## B. Investigation Procedures

Upon the filing of a Formal Complaint, the Title IX Coordinator (or designee) will review the Formal Complaint to determine whether the allegations, if true, would constitute Federal Rule Sexual Misconduct. If the Title IX Coordinator determines that the allegations in the Formal Complaint, if true, would constitute Federal Rule Sexual Misconduct, the Title IX Coordinator must commence an investigation as set forth below.

If the Title IX Coordinator determines that the allegations in the Formal Complaint, if true, would not constitute Federal Rule Sexual Misconduct but would constitute Other Prohibited Conduct, the Title IX Coordinator will review the Formal Complaint to determine whether the allegations, if true, significantly impact the University Community, represent a potential threat to members of the University Community, or have some other significant connection to the University Community. Based on this review, the Title IX Coordinator will have discretion to commence an investigation as set forth below.

Throughout the investigation and adjudication of the Formal Complaint, both the Complainant and the Respondent may select an Advisor of their choice. Details concerning the role of the Advisor are set forth in the applicable adjudication procedures under Section VI.C and Section VI.E of this Policy. The role of an Advisor in any hearing may vary based on the applicable adjudication procedures.

After deciding to commence an investigation, the Title IX Coordinator will appoint an investigator to review, assess and investigate the Formal Complaint (the "Investigator"). The Investigator may be a staff member in the Office for Institutional Equity and Title IX, a staff member in Human Resources, a staff member in another department at the university, or



an external professional. The Title IX Coordinator is responsible for ensuring that the Investigator has been appropriately trained and is free of conflicts of interest or bias that would impair the investigation.

The Title IX Coordinator will send the Complainant, Respondent and their respective Advisors a written notice of investigation. The Investigator will conduct an investigation and prepare a preliminary investigative report that fairly summarizes the relevant evidence gathered during the investigation. Prior to preparing any report the Investigator will request relevant information from the parties as well as work to gather other relevant available evidence. Although the ultimate responsibility for gathering available evidence rests with the University, the University is unable to compel any person to participate in its grievance process.

The university cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the university obtains that party's voluntary, written consent. Throughout the investigation the university will provide both parties equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence. The parties may offer testimony from an expert witness, as specified in Appendix B to this policy. The preliminary investigative report will be made available to the Complainant, Respondent and their respective Advisors in electronic or hard-copy format. Any evidence collected during the investigation will also be made available to the Complainant, Respondent and their respective Advisors for inspection and review in electronic or hard-copy format.

The Complainant and Respondent will have at least ten (10) business days to review and respond to the preliminary investigative report. The Investigator will consider any responses submitted by the Complainant, Respondent and their respective Advisors and prepare a final investigative report ("Investigative Report").

The Title IX Coordinator will review the Investigative Report and all relevant evidence to determine whether the allegations, if true, would constitute Federal Rule Sexual Misconduct and/or Other Prohibited Conduct. Allegations that would constitute Federal Rule Sexual Misconduct will be adjudicated under Section VI.C regarding Adjudication Procedures for Federal Rule Sexual Misconduct. Allegations that would constitute Other Prohibited Conduct will be adjudicated under Section VI.E regarding Adjudication Procedures for Other Prohibited Misconduct. In cases involving multiple allegations which include Federal Rule Sexual Misconduct and Other Prohibited Conduct, the university reserves the right to decide whether to adjudicate all allegations in a single process under the Procedures for Federal Rule Sexual Misconduct or to separately adjudicate the allegations under separate applicable procedures.

When the university receives a report of alleged conduct that could constitute Prohibited Conduct other than Federal Rule Sexual Misconduct (i.e. Other Prohibited Conduct) under this Policy and could violate other university policies, the university, in its discretion, will determine which policy/ies and procedures apply and whether action will be taken under multiple policies.

With regard to Federal Rule Sexual Misconduct and Other Prohibited Conduct, in the event that at the time of a report or the conclusion of an investigation it becomes apparent that the alleged conduct, if true, would not constitute Federal Rule Sexual Misconduct or Other Prohibited Conduct as defined in this Policy, the matter may be adjudicated under another applicable policy or procedure at the university's discretion.

For any allegation of Prohibited Conduct that allegedly occurred before the effective date of this Policy, the university will use the sexual harassment and/or sexual assault policy that was in effect at the time the Prohibited Conduct allegedly occurred for the purpose of defining conduct that constitutes a violation of policy. However the matter will be investigated and adjudicated using the current procedures as set forth in Section VI of this Policy. Complaints where all of the alleged Prohibited Conduct occurred before the effective date of this Policy will be adjudicated using the procedures for Other Prohibited Conduct set forth in Section VI.E of this Policy.

## C. Adjudication Procedures for Federal Rule Sexual Misconduct

### Appointment of Hearing Officer

After reviewing the Investigative Report prepared under Section VI.B above, if the Title IX Coordinator determines that the allegations, if true, would constitute Federal Rule Sexual Misconduct, the university will conduct a formal hearing. The Title IX Coordinator will appoint a hearing officer ("Hearing Officer") who will be responsible for presiding over a live hearing and making findings of fact and a determination of responsibility with respect to each allegation in the Formal Complaint. The Title IX Coordinator and/or Investigator are not eligible to serve as the Hearing Officer.

### Conduct of the Hearing & Written Determination

The Hearing Officer will conduct a live hearing in accordance with the Hearing Procedures for the Adjudication of Federal Rule Sexual Misconduct [pdf]. The hearing will take place no sooner than ten days after the parties are provided with the Investigative Report.

At the conclusion of the hearing, the Hearing Officer will make findings of fact and a determination of responsibility with respect to each allegation. The determination of responsibility will be made using the preponderance of evidence standard.

If the Hearing Officer determines that the Respondent is responsible for any allegation, the Hearing Officer will contact the appropriate sanctioning officer, as specified below, to review the findings of fact and determination(s) regarding responsibility ("Sanctioning Officer"). The Sanctioning Officer will have 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 any of the allegations, the Sanctioning Officer will not be contacted.

The applicable Sanctioning Officer is based on the nature of the Respondent's relationship to the university:

- Sanctioning Officer for Students: Associate Vice President of Student Affairs for Community Life or designee

- Sanctioning Officer for Staff: Associate Vice President & Chief Human Resources Officer or designee
- Sanctioning Officer for Faculty: Vice Provost for Faculty or designee

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 required content of the written determination of the Hearing Officer is set forth in the Hearing Procedures for the Adjudication of Federal Rule Sexual Misconduct [pdf].

#### Notice of Written Determination

The written determination will be provided to the Title IX Coordinator. 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.

#### Additional Procedures for Sanctions Against Faculty Respondents

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 recommended sanctions until either (i) the completion of any appeal filed by any party under Section VI.D of this Policy or (ii) the deadline to file an appeal under Section VI.D of this Policy 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 consistent with the procedures in Section VI.D of this Policy. 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). 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.

## D. Appeal Procedures for Federal Rule Sexual Misconduct

Both the Complainant and Respondent have the right to file an appeal regarding (i) the determination under Section VI.C of this Policy or (ii) the dismissal of a Formal Complaint and/or determination that a Formal Complaint does not constitute Federal Rule Sexual Misconduct. 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 VI.C. 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:

- Procedural irregularity that affected the outcome of the matter;
- 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;
- 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
- The sanctions imposed are disproportionate to the finding of responsibility.

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.

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.

Appeals will be decided by the Appeal Officer in a timely manner as circumstances warrant. While an appeal is under review, the appeal officer will update the Respondent(s) and Complainant(s) as necessary about the anticipated timeline. The Appeal Officer has the authority to modify the decision as they deem 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). The Appeal Officer may also remand the matter for a new live hearing under Section VI.C of this Policy.

The Appeal Officer will issue a written decision describing the result of the appeal and the rationale for the result. The Appeal Office will provide the written decision simultaneously to both the Complainant and Respondent. The Title IX Coordinator will also receive a copy of the decision.

## E. Adjudication Procedures for Other Prohibited Conduct

The specific procedures for adjudicating allegations of Prohibited Conduct that, if true, would not constitute Federal Rule Sexual Misconduct (i.e. Other Prohibited Conduct) are based upon the nature of the Respondent's relationship to the university.

- **Where the Respondent is a Student** — the matter will be handled in accordance with the university's Student Community Standards Process, which is set forth in the [Community Standards section of The Word](#). Appeals will also be handled in accordance with the Student Community Standards Process.
- **Where the Respondent is a Staff member**— the Title IX Coordinator will send the Investigative Report to the Assistant Vice President, People and Organization Effectiveness, in Human Resources and the matter will be handled in accordance with the procedures set forth in the [Staff Handbook](#), Volume II, Section 10c.
- **Where the Respondent is a Faculty member** — the Title IX Coordinator will send the Investigative Report to the Provost who will appoint a Hearing Officer to adjudicate the matter. The Hearing Officer will conduct a live hearing using the [Procedures for Other Prohibited Conduct \[pdf\]](#). At the conclusion of the hearing, the Hearing Officer will prepare a written report regarding findings of fact and a determination of responsibility with respect to each allegation. The determination of responsibility will be made using the preponderance of evidence standard.

The written report of the Hearing Officer will be provided to the Vice Provost for Faculty (or designee). If the report of the Hearing Officer includes a determination that the Respondent is responsible for any of the allegations, the Vice Provost for Faculty will make a recommendation to the President regarding applicable sanctions and remedies. The report of the Hearing Officer and, if applicable, the recommendation of the Vice Provost for Faculty regarding sanctions will be provided to the Complainant, the Respondent, and the Title IX Coordinator.

The Complainant and Respondent may appeal the decision of the Hearing Officer and/or the sanctions recommended by the Vice Provost for Faculty to the Provost. An appeal must be submitted in writing to the Office of the Provost within seven (7) calendar days of the notification of the decision of the Hearing Officer to the Complainant and Respondent. The basis for an appeal will be limited to one or more of the following:

- Procedural irregularity that affected the outcome of the matter;
- 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;
- The Title IX Coordinator, Investigator(s), or Hearing Officer, or Vice Provost for Faculty 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
- The sanctions recommended by the Vice Provost for Faculty are disproportionate to the finding of responsibility.

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.

Where the Vice Provost for Faculty 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 Provost or the Provost'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.

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 Vice Provost for Faculty 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.

- **Where the Respondent has dual-status (e.g. more than one status as Faculty, Staff or Student)** — the university has discretion to determine which process to use under Section VI.E depending on the circumstances of the case.
- **Where the Respondent is a third party** — The university's ability to take appropriate corrective action against a third party will be determined by the nature of the third party's relationship to the university. The Title IX Coordinator will determine the appropriate manner of resolution in accordance with the university's commitment to a prompt and equitable process and consistent with state and federal law, regulations, guidance, and this Policy.



## F. Possible Outcomes & Sanctions from Adjudication

Possible outcomes from a violation of this Policy range from educational outcomes to separation from the university. A detailed list of the possible remedies and sanctions is available in Appendix A to this Policy.

## G. Alternative Resolutions

This Policy describes two procedures for the formal resolution of Prohibited Misconduct – a procedure for the adjudication of Federal Rule Sexual Misconduct in Section VII.C and a procedure for Other Prohibited Conduct in Section VII.E. Separate from these formal resolution procedures, the university offers several forms of alternative resolution (“Alternative Resolution”) procedures that may be available on a voluntary basis to resolve a Formal Complaint under this Policy.

Individuals interested in an Alternative Resolution should contact the Office for Institutional Equity and Title IX to discuss options. For information regarding the types of Alternative Resolution procedures that may be available please see the Office for Institutional Equity and Title IX website.

Either party may request to pursue an Alternative Resolution at any time after the filing of the Formal Complaint and before a finding of responsibility under Section VI.C or Section VI.E. The Title IX Coordinator has discretion to determine whether the parties will be permitted to pursue an Alternative Resolution. Alternative Resolutions are not available in cases involving a Student Complainant and a Faculty or Staff Respondent. In general, mediation and other Alternative Resolution procedures that are similar to mediation will not be used to resolve matters involving an allegation of sexual violence (i.e. Sexual Assault, Dating Violence, Domestic Violence or any other form of Prohibited Conduct that involves the use of violence).

After receiving a request to pursue an Alternative Resolution, the Title IX Coordinator will contact both parties to assess mutual interest in the Alternative Resolution. If both parties wish to pursue Alternative Resolution, and the Title IX Coordinator agrees that Alternative Resolution is appropriate under the specific facts and circumstances of the case, the Title IX

Coordinator will provide the Complainant and Respondent with a written notice providing (i) the allegations in the Formal Complaint; (ii) the specific Alternative Resolution method desired by the parties; (iii) details of the procedures for the Alternative Resolution; (iv) a summary of the possible consequences and outcomes of the Alternative Resolution, and (v) information regarding the confidentiality and/or accessibility of the records of the Alternative Resolution. After receiving this notice, both the Complainant and Respondent must provide written consent to the Title IX Coordinator in order to proceed with the Alternative Resolution.

During any Alternative Resolution process, either party has the right to withdraw from the process at any time prior to the conclusion of the process. If either party withdraws from the Alternative Resolution process or if the parties are unable to successfully resolve the matter at the conclusion of the Alternative Resolution process, the matter will proceed to investigation under Section VI.B or to adjudication under Section VI.C or Section VI.E, as appropriate.

## H. Student Emergency Removal

Where there is an immediate threat to the physical health or safety of any Students or other individuals arising from alleged Prohibited Conduct, the university may remove an individual from the University's Program or Activity and issue any necessary related no-trespass and no-contact orders during the pendency of the investigation. The university will make the decision to remove an individual from the University's Program or Activity based on an individualized assessment and risk analysis.

For Students, an emergency removal decision will be made in accordance with the Safety Intervention Protocol set forth in The Word. In the event the university removes any person on this basis, the university will provide an opportunity for the affected individual to challenge the removal promptly thereafter, as specified in the Safety Intervention Protocol.

# VII. Additional Information about Reporting

## A. How the Title IX Coordinator and University Police Share Information about Prohibited Conduct with Each Other

The university's process for addressing Prohibited Conduct is separate from the law enforcement process for addressing crimes.

The university strongly believes that the decision as to whether to report a crime should be left to the individual(s) impacted by the crime, except in very limited circumstances where there may be an immediate threat to the University Community. The Title IX Coordinator will share de-identified information about reports with University Police for the purpose of complying with the university's federal reporting obligations to facilitate accurate compilation of crime statistics, and to ensure that other public safety responsibilities are addressed. In extremely limited circumstances, the Title IX Coordinator may share identifying information with University Police, for example, where the university is obligated to report a "Timely Warning" pursuant to Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (e.g., when a crime has been committed on or near University Property which represents a serious, ongoing threat and/or is part of an ongoing pattern). The report does not constitute a criminal complaint to law enforcement, although the University Police Department may contact individuals to offer assistance, inquire about their willingness to preserve evidence, or file a criminal complaint.

Making a report to the University Police means that information will be shared with others as is necessary and appropriate. For example, if an individual makes a report of Prohibited Conduct to the University Police Department that has not already been reported to the Title IX Coordinator, the University Police Department will report the matter to the Title IX Coordinator. The purpose of this report is to ensure that the university can take appropriate actions to seek to eliminate Prohibited Conduct, prevent its recurrence, and remedy its effects. The Complainant or others may be contacted by the Title IX Coordinator to follow up on the information received from the University Police Department to offer

supportive measures, including filing a Formal Complaint with the [Office for Institutional Equity and Title IX](#).

## B. Time Frame for Reporting an Incident to the University

The university strongly encourages individuals to report possible Prohibited Conduct promptly. Although the university does not limit the time frame for reporting Prohibited Conduct, it may be more difficult for the university to gather relevant and reliable evidence or to take corrective action regarding conduct that is reported to have occurred relatively long ago.

If the Respondent is no longer a Student, Staff member, Faculty member, or participant in any university program or activity at the time of the report, or if the conduct does not fall within the scope of the Policy, the university's ability to take action against the Respondent under the Policy may be limited. The university will, however, also help a Complainant identify other options outside the university, such as local law enforcement, and provide support and resources.

## C. Information on Amnesty to Students When Reporting Prohibited Conduct to the University

The university will not pursue university Prohibited Conduct charges against any Student in an investigation under this Policy for potential violations of university policy for personal consumption of alcohol or other drugs identified during an investigation, as long as any such violations did not and do not place the health or safety of any other person at risk. The university may, however, initiate an assessment, educational discussion, or pursue other developmental interventions (non-disciplinary options) to address the alcohol or other drug use.

# VIII. Obligations of University Employees

All Carnegie Mellon community members are strongly encouraged to report information about potential violations of this Policy to the Title IX Coordinator. Sharing information with

the Title IX Coordinator does not initiate a formal investigation or impose any obligations on the Complainant. However, disclosing information to the Title IX Coordinator enables the university to offer supportive measures to the party so that they may maintain equal access to their education and work environments.

Responsible Employees have a heightened obligation to report information of potential policy violations. All Staff and Faculty who are Responsible Employees are required to promptly share with the Title IX Coordinator all details they receive in the scope of their employment about Prohibited Conduct. Responsible Employees can make a report to the Title IX Coordinator by contacting the Office for Institutional Equity and Title IX.

Failure by a Responsible Employee to promptly share with the Title IX Coordinator all details they receive, including names of involved parties, in the scope of their employment about Prohibited Conduct may subject them to appropriate discipline, up to and including removal from their position.

The following positions are Responsible Employees:

- University administrators and supervisors; and
- Employees holding any of the roles or titles list below, including those serving in an interim or acting basis:

#### **Faculty or Staff Administrators**

- President;
- Provost;
- Vice-Presidents (including those serving in associate and assistant roles);
- Vice-Provosts (including those serving in associate and assistant roles);
- Deans (including those serving in associate and assistant roles);
- Department Chairs (including those serving in associate and assistant roles, graduate chairs, and undergraduate chairs);
- Directors; and
- Supervisors (i.e., employees who have authority to hire, transfer, suspend, layoff, recall, promote, discharge, reward, or discipline other employees).

## **Student Affairs**

- All Staff members (including any individual, whether an employee or not, who serves as a coach of a club sports team), excluding administrative assistants, custodial, maintenance, and dining employees; and
- Community Advisors and Resident Assistants in Residential Education.

## **Athletics**

- All Staff members, excluding administrative assistants, custodial, maintenance, and dining employees.

## **University Police**

- All Staff members

## **Other**

- All Human Resources Staff members (central, school, college, division, and/or unit) who are responsible for handling employment issues, excluding clerical and transactional employees;
- All Staff members and Faculty members who provide oversight to or travel with Students on university-related travel abroad, including university-sponsored study abroad, research, fieldwork, or internship programs. Unless designated as a Responsible Employees in another role at the university, staff and Faculty members who provide oversight to or travel with Students on university related travel abroad, are only considered Responsible Employees with respect to concerns they become aware of connected to the program with which they provide oversight or travel abroad with Students; and
- Faculty and Staff members serving as identified advisers to student organizations.

Confidential Resources, such as individuals employed at CaPS and the University Health Center, acting in that capacity, are not Responsible Employees. Nevertheless, these individuals can serve as connection points to Supportive Measures through the Office of Title IX Initiatives if desired by a party.

Responsible Employees are not required to report when incidents of Prohibited Conduct are communicated/disclosed during a classroom discussion, in an assignment for a class (and in discussions outside of class time (e.g., during office hours) related to the assignment), or as part of a research project directly associated with the class.

Responsible Employees also are not required to report information disclosed at sexual misconduct public awareness events (e.g., Take Back the Night, candlelight vigils, protests, or survivor speak-outs in which participants may disclose incidents of Prohibited Conduct).

If you are unsure of whether you are a Responsible Employee, please contact the Title IX Coordinator in order to help clarify your role and responsibilities.

## IX. Definitions

### A. Sexual Misconduct Definitions

#### **PROHIBITED CONDUCT**

means one or more categories of prohibited behavior including:

- Sexual Assault;
- Sexual Exploitation;
- Sexual Harassment;
- Dating Violence;
- Domestic Violence;
- Stalking;
- Retaliation; and
- Violation of Protective Measures.

Definitions for each of the types of Prohibited Conduct are provided below.

#### **SEXUAL HARASSMENT**

means any unwelcome conduct or cues of a sexual nature, whether verbal/aural (sounds), visual/graphic (e.g. pictures and videos), physical, or otherwise, when:

- Submission to such conduct is made, either explicitly or implicitly, a term or condition of a person's employment, education, living environment, or

participation in any University Program or Activity (commonly known as Quid Pro Quo);

- Submission to or rejection of such conduct by an individual is used as the basis for or a factor in decisions affecting that individual's employment, education, living environment, or participation in a University Program or Activity (commonly known as Quid Pro Quo); and/or
- Such conduct creates a hostile environment. A hostile environment exists when the unwelcome conduct of a sexual nature is sufficiently severe, persistent, or pervasive that it unreasonably interferes with an individual's participation in a university program or activity or creates an intimidating, hostile, offensive, or abusive environment for that individual's participation in a University Program or Activity (commonly known as Hostile Environment).

*Examples of conduct that may constitute Sexual Harassment include but are not limited to:*

- Unwanted intentional touching that otherwise does not typically constitute Sexual Assault, defined in this Policy;
- Unwanted sexual advances, including repeated unwanted requests for dates, or repeated unwanted requests for sexual contact;
- Unwanted written, verbal, or electronic statements of a sexual nature, including sexually suggestive comments, jokes, videos or innuendos;
- Exposing one's genitalia, breasts, or buttocks, to another; and/or
- Touching oneself sexually for others to view.

This definition addresses intentional conduct. It also includes conduct that results in negative effects even though such negative effects were unintended. Unwelcome conduct of a sexual nature constitutes Sexual Harassment if a Reasonable Person would consider it sufficiently severe, persistent, or pervasive as to interfere unreasonably with academic, other educational, or employment performance or participation in a university activity or living environment.

### **SEXUAL ASSAULT**

means a physical, sexual act directed against another person without their Consent, including instances where the victim is incapable of giving Consent. Sexual Assault can occur between two individual of the same or different sexes and/or genders. This includes the following:



**I. RAPE**

means the carnal knowledge of a person, without the Consent of the victim, including instances where the victim does not have the Capacity to give Consent;

**II. SODOMY**

means oral or anal sexual intercourse with another person, without the Consent of the victim, including instances where does not have the Capacity to give Consent;

**III. SEXUAL ASSAULT WITH AN OBJECT**

means to use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the Consent of the victim, including instances where the victim does not have the Capacity to give Consent;

**IV. FONDLING**

means the touching of the private body parts of another person for the purpose of sexual gratification, without the Consent of the victim does not have the Capacity to give Consent;

**V. INCEST**

means sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law; or

**VI. STATUTORY RAPE**

means sexual intercourse with a person who is under the statutory age of Consent in the applicable jurisdiction.

In the Commonwealth of Pennsylvania, the age of consent for sexual activity is 16. Minors aged 16 years of age or older can legally consent to sexual activity with anyone they choose, as long as the other person does not have authority over them as defined in Pennsylvania's institutional sexual assault statute.

Minors under the age of 13 cannot consent to sexual activity. Minors aged 13-15 years old cannot consent to sexual activity with anyone who is 4 or more years older than they are at the time of the activity.

## **DATING VIOLENCE**

means any act of violence, including sexual violence, physical violence, or the threat of such violence, committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim and where the existence of such a relationship is determined based on a consideration of the length, type, and frequency of interactions between the persons involved in the relationship.

## **DOMESTIC VIOLENCE**

means any act of violence, including sexual violence, physical violence, or the threat of such violence, committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

## **STALKING**

means engaging in a course of conduct directed at a specific person that would cause a Reasonable Person to fear for his or her safety or the safety of others or suffer substantial emotional distress

## **SEXUAL EXPLOITATION**

means intentionally or knowingly taking sexual advantage of another person or violating the sexual privacy of another when Consent is not present. This includes, but is not limited to, the following actions (including when they are done via electronic means, methods or devices):

- engaging in sexual voyeurism including observing or permitting others to witness or observe the sexual or intimate activity (e.g., disrobing, bathing, toileting) of another person without that person's Consent;

- engaging in indecent exposure, or exposing intimate parts (including genitalia, groin, breasts and/or buttocks), or causing another to expose intimate parts when Consent is not present;
- recording or distributing information, images or recordings of any person engaged in sexual or intimate activity in a private space without that person's Consent;
- prostituting another individual;
- causing Incapacitation of another person (through alcohol, drugs or other means) for the purpose of compromising that person's ability to give Consent to non-consensual sexual activity; or
- actively aiding or assisting another person in committing an act of Prohibited Conduct.

## **RETALIATION**

means an adverse (negative) action taken against a person for making a good faith report of Prohibited Conduct, being alleged to have committed Prohibited Conduct, participating, or refusing to participate, in any proceeding under this Policy.

- Retaliation may include intimidation, threats, coercion, harassment, or discrimination (including charging a Respondent under a different university policy instead of this Policy for the purpose of interfering with any right or privileged secured by Title IX or its implementing regulations).
- Retaliation may also include adverse employment or educational actions that would discourage a Reasonable Person from engaging in a Protected Activity protected under this Policy.

*A finding of retaliation under this Policy is not dependent on a finding that the underlying sexual misconduct occurred. Retaliation is also prohibited by the university's Policy Against Retaliation.*

*Supportive Measures and other actions taken in accordance with this or other university policies generally do not constitute Retaliation. Similarly, charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this Policy does not constitute prohibited Retaliation, provided, however, that*

*a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith. Retaliation also does not include pursuit of civil, criminal, or other legal action, internal or external to the university.*

### **PROTECTED ACTIVITY**

means participating in the university's processes related to this Policy, including but not limited to reporting Prohibited Conduct; pursuing a resolution of Prohibited Conduct; providing evidence in any investigation or hearing; or intervening to protect others who may have suffered Prohibited Conduct.

## **B. Definitions Relating to Consent**

### **CONSENT**

means a knowing and voluntary agreement to engage in sexual activity at the time of the activity. In order to be valid, consent must be knowing, voluntary, active, present and ongoing. Consent should be demonstrated through mutually understandable words or actions.

- Silence, remaining still or inactive (passive), or not actively resisting sexual activity does not imply consent.
- Consent to engage in one sexual activity does not mean consent to engage in another sexual activity. Consent must be obtained each time, at each step of sexual activity.
- Prior consent does not mean future consent. Consent must be obtained each time, at each step of sexual activity, even for those in an ongoing sexual relationship.
- Consent can be withdrawn at any time. If one individual withdraws consent through clear words or actions, the other person must cease sexual activity immediately.
- Consent cannot be obtained through Force, Incapacitation or Coercion (as defined here in).

### **FORCE**

means using physical control (such as restraining a person), physical violence (such as

hitting, choking or displaying a weapon), or threats of either to cause a person to submit to unwanted sexual activity.

## **COERCION**

means using an unreasonable amount of pressure or threats that would overcome the will of a Reasonable Person and cause them to submit to unwanted sexual activity. Coercion requires more than an attempt to persuade someone to engage in sexual activity. Coercion can include threats, such as threats to cause academic, employment, reputational or economic harm. When one person expresses that they do not consent to sexual activity or are withdrawing consent for sexual activity, applying continued pressure in order to get the person to submit to unwanted sexual activity can be considered Coercion.

## **INCAPACITATION**

means that a person lacks the ability to make informed, deliberate choices about whether or not to engage in sexual activity. A person is Incapacitated — unable to give consent — because they are:

- under the age of consent (generally 16 years of age in Pennsylvania; see definition of Statutory Rape for additional information);
- physically or mentally helpless;
- asleep or unconscious; or
- unaware that sexual activity was requested, suggested, initiated and/or is taking place.

*A person may be Incapacitated by the use of alcohol or other drugs. Incapacitation is a state beyond intoxication or drunkenness. A person is not necessarily Incapacitated solely as a result of drinking or using drugs; the level of impairment must be significant enough to render the person unable to give Consent.*

*For example, a person who is Incapacitated may not be able to answer some or all of the following questions:*

- *Do you know where you are?*
- *Do you know how you got here?*

- Do you know what is happening?
- Do you know whom you are with?

*A person who is Incapacitated may also demonstrate physical signs including but not limited to:*

- *slurred or incomprehensible speech;*
- *unsteady manner of walking or inability to walk;*
- *vomiting or incontinence (a lack of voluntary control over urination and/or defecation).*

*If a person under the influence of alcohol or drugs decides to participate in sexual activity that they would not participate in while sober, it does not necessarily mean that the person was Incapacitated or that the Consent was not valid.*

***Importantly, being impaired by alcohol or other drugs is not a defense to a failure to obtain Consent.***

## **CAPACITY**

means that the person has the ability under the law to give Consent to engage in sexual activity. This means that the person must be:

- Of legal age to give Consent (generally at least 16 years of age in Pennsylvania; see definition of Statutory Rape for additional information); and
- Able to make informed, deliberate choices about whether or not to engage in sexual activity.

*A person who is not able to give consent is considered to be Incapacitated.*

## **C. Policy Definitions**

### **ACTUAL KNOWLEDGE**

means that the university has notice of alleged Sexual Misconduct because the alleged misconduct has been reported to the Title IX Coordinator or any official of the university who has the authority to institute corrective measures on behalf of the university. These are individuals whose “actual knowledge” may be imputed to the university.

### **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.

If either party does not have an Advisor present at the live hearing conducted under Section VI.C, 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. In this event, the role of the Advisor provided by the university will be limited to the conducting of cross examination on behalf of the party that did not have an Advisor.

### **COMPLAINANT**

In most circumstances, Complainant means a person who is reported to have experienced Prohibited Conduct. The term Complainant also includes such individuals who file a Formal Complaint and who participates in a process undertaken by the university to address the report of Prohibited Conduct (including Federal Rule Sexual Misconduct). In some cases, a Complainant may be different than the person who initially reports information to the university.

### **EMPLOYEE**

person who is employed by the university to perform one or more of the following roles: regular instructional faculty, supplemental instructional faculty, research track faculty, visiting faculty, librarians, archivists, curators, graduate student instructors, graduate student staff assistants, graduate student research assistants, postdoctoral research fellows, and all regular and temporary staff.

### **FACULTY/FACULTY MEMBER**

means all individuals who hold appointments on the tenure-track, research-track, teaching-track, librarian/archivist-track and special faculty track of the university, as well as individuals holding Emeritus Faculty status.

### **FEDERAL RULE SEXUAL MISCONDUCT**

is a subset of Prohibited Conduct which meets the definition of Sexual Harassment in the Title IX Regulations at 34 CFR Part 106.30.

Something which meets the definition of category of Prohibited Conduct (defined above) rises to the level of Federal Rule Sexual Misconduct when it meets ALL of the following three conditions:

- The alleged conduct was perpetrated against a person in the United States; and
- The conduct took place within the University's Programs or Activities.

**PLUS one or more** of the following conditions:

- i. An Employee engages in Quid Pro Quo Sexual Harassment against a Student; and/or
- ii. An individual engages in hostile environment Sexual Harassment that is so severe, pervasive, and objectively offensive that it denies another person equal access to the University's Programs or Activities; and/or
- iii. An individual engages in Sexual Assault, Dating Violence, Domestic Violence, or Stalking.

### **FORMAL COMPLAINT**

means a written or typed document, signed by the Complainant or the Title IX Coordinator (electronically or otherwise), which requests that the university initiate the procedures outlined in Section VI. If the Complainant is under the age of 18 and not enrolled in an undergraduate or graduate program, the Complainant's parent or guardian must sign the Formal Complaint.

### **OTHER PROHIBITED CONDUCT**

means any Prohibited Conduct that does not meet the definition of Federal Rule Sexual Misconduct.

### **REASONABLE PERSON**

a person using average care, intelligence, and judgment in the known circumstances.

### **REPORT**

means information shared with the university's Title IX Coordinator about one or more incidents of Prohibited Conduct which have occurred (or is continuing to occur) and which:

- has impacted (or continues to impact) one or more members of the University Community; and/or



- was or is committed by one or more members of the University Community; and/or
- occurred or is occurring on property owned or controlled by the University or within the University's Programs or Activities.

## **RESPONDENT**

an individual who is reported to have engaged in Prohibited Conduct (including Federal Rule Sexual Misconduct).

## **RESPONSIBLE EMPLOYEE**

an individual who is required to report information of alleged Prohibited Misconduct (including Federal Rule Sexual Misconduct) to the university's Title IX Coordinator. The categories of "Responsible Employee" includes:

1. University administrators and supervisors; and
2. Employees in certain designated positions and units or departments.

A Responsible Employee is required to share all relevant information about the alleged Prohibited Conduct, of which they are aware, with the Title IX Coordinator within 48 hours of learning them. Relevant information includes (to the extent known by the Responsible Employee):

- a. Name (or names) of the Complainant(s);
- b. Name (or names) of Respondent(s);
- c. Details about the nature of the alleged Prohibited Conduct; and
- d. Any information available about location(s), date(s), and/or time(s).

A full list of Responsible Employees and more information about a Responsible Employee's obligations can be found in Section VIII.

*A Responsible Employee's receipt of information about alleged Prohibited Conduct (including Federal Rule Sexual Misconduct) will not automatically trigger a formal resolution under this Policy. The university will only commence Formal Resolution upon receipt of a Formal Complaint signed by the Complainant or the Title IX Coordinator.*

**STAFF/STAFF MEMBER**

means all Employees of the university who do not hold faculty appointments. Staff does not include individuals whose primary relationship with the university is as a Student.

**STUDENT**

a person who was selected by the university for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at any of the University's Programs or Activities.

**UNIVERSITY COMMUNITY**

refers to university Students, Faculty and Staff.

**UNIVERSITY'S PROGRAMS OR ACTIVITIES**

Conduct takes place in the "University's Programs or Activities" when that conduct occurs: (1) in a location, at an event, or in a circumstance where the university exercises substantial control over both the Respondent and the context in which the conduct occurs; or (2) in any building owned or controlled by a student organization recognized by the university. *Examples:* Conduct that occurs on-campus occurs within the University's Programs or Activities. Conduct that occurs off campus in locations or at events with no connection to the university is unlikely to occur in a program or activity of the university.

**VIOLATION OF PROTECTIVE MEASURES**

Any violation of an agreement or order that limits an individual's contact or interactions with another individual. Such agreement or order may have been issued under the authority of the university, another institution, or a local, state or federal government or court.

# Appendix A: Possible Sanctions and Remedies

Possible outcomes from a violation of this Policy may include non-punitive remedies and punitive sanctions. Such remedies and sanctions may include the following:

## Possible Remedies

- A no contact order;
- Academic adjustments or accommodations; and
- Workplace adjustments or accommodations.

## Possible Sanctions

- Educational outcomes including conversation with staff and/or reflective paper or project;
- Mandatory training;
- Written apology;
- Written or verbal warning;
- Mental health and/or substance use assessment and recommended follow up;
- Community service;
- Restrictions/limitations on access to campus programs or activities;
- Restrictions/limitations on access to campus property;
- Removal/ban from university housing;
- Mandated removal from class or change to academic schedule;
- Relocation of office;
- Restriction or ban on attending Carnegie Mellon programs and events;
- Removal/ban from campus;
- Disciplinary Probation;
- Disciplinary Suspension;
- Expulsion;
- Suspension from employment;
- Termination of employment;
- Suspension of a conferred degree;

- Revocation of a degree; and
- Referral for action under other policies.

## Appendix B: Expert Witness Testimony

This appendix sets forth the standards for the consideration of Expert Witness testimony in the investigation and adjudication of allegations of Prohibited Conduct under the Interim Sexual Misconduct Policy.

### Definitions

1. Expert Witness — An Expert Witness is a person who is a specialist in a subject, often technical, who may present expert opinion without having been a witness to or having first hand personal knowledge relating to an allegation of Prohibited Conduct under this Policy.
2. Hearing Officer — For purposes of this Appendix only, the term Hearing Officer means (i) the Hearing Officer appointed under Section VI.C, (ii) the University Disciplinary Committee for cases involving Student Respondents under Section VI.E, (iii) the Assistant Vice President of Human Resources, People and Organizational Effectiveness or designee for cases involving Staff Respondents under Section VI.E, or (iv) the Hearing Officer appointed for cases involving Faculty Respondents under Section VI.E.

### Notice of Intent to Introduce Expert Witness Testimony

3. A party who wishes to introduce Expert Witness testimony must provide written notice of the intent to introduce Expert Witness testimony no later than thirty (30) calendar days after receiving the Notice of Investigation issued under Section VI.B or no later than ten (10) calendar days after receiving notification that the other party intends to introduce Expert Witness Testimony, whichever date is later.
4. After receiving Notice of Intent to Introduce Expert Witness Testimony, the Investigator shall provide written notice of such to all other Complainant(s) or Respondent(s) in the investigation.

5. A party seeking to introduce Expert Witness Testimony must submit the name of the proposed Expert Witness and a copy of the Expert Witness's Curriculum Vitae to the Investigator no later than ten (10) calendar days after submitting the notice of intent to introduce Expert Witness testimony under Section 2 above. The Investigator will promptly share the name and Curriculum Vitae of the proposed Expert Witness with all other Complainant(s) or Respondent(s) in the investigation.

## Expert Report & Acceptance of Expert Witness Testimony in the Investigation

6. Expert Witness testimony is admissible only when the Investigator determines that such testimony is potentially relevant to the investigation and where the investigator determines that the Expert Witness is qualified to provide such testimony. The Investigator may disallow and/or disregard any testimony or written report submitted by an Expert Witness if the Investigator determines that (i) the Expert Witness testimony is not potentially relevant to the investigation and/or (ii) the Expert Witness is not qualified to provide such testimony.
7. An Expert Witness must submit a written report to the Investigator no later than fourteen (14) calendar days after the submission of the notice of intent to introduce Expert Witness testimony under Section 2 above.
8. All evidence specific to the allegations that is used by the Expert Witness must be either included in the Expert Witness Report or separately produced to the Investigator for inclusion with the collected evidence.
9. The Expert Witness must participate in a live interview with the Investigator.
10. The Investigator has sole discretion to determine whether the written report of the Expert Witness, or any portion thereof, will be included in the Investigative Report prepared under Section VI.B. For example, the complete written report may be incorporated by reference into the Investigative Report and/or specific excerpts of the report may be included in the Investigative Report.

## Admissibility of Expert Witness Testimony for Adjudication

11. In order for Expert Witness testimony to be considered for purposes of adjudication under Section VI.C or Section VI.E of this policy, the Expert Witness

must be available to testify at any live hearing and actually must testify at the live hearing if called to testify by the Hearing Officer or University Disciplinary Committee. The Expert Witness must submit to cross examination if cross examination is available under the applicable adjudication procedure.

12. 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.
13. Excepted 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 and/or UDC Board has sole discretion to determine whether testimony is within the scope of the written report and may strike and/or disregard any testimony, where necessary. The Hearing Officer and/or UDC Board may choose to permit Expert Witness testimony that exceeds the scope of the written report if it is determined that such testimony is necessary to rebut the testimony of another witness.

## Extension or Waiver of Expert Witness Deadlines

14. Any party may request an extension or waiver of any deadline in this Appendix by submitting a written request to the Title IX Coordinator and the Investigator. The written request must include an explanation of why the party is/was unable to meet the deadline. The Title IX Coordinator has sole discretion to extend or waive deadlines.

## Miscellaneous

15. The party seeking to introduce Expert Witness testimony is solely responsible for any all expenses and fees charged by Expert Witness.

**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

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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 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.

# 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 section VI.C of the [Carnegie Mellon University Interim Sexual Misconduct Policy](#) (Policy). These procedures will be initiated when the Title IX Coordinator appoints a Hearing Officer as specified in section VI.C of the Policy.

Last Updated – March 8, 2022.

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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 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.

- 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 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 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.
- h. 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 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.
- 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. 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.

- 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. 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 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 provided that, pursuant to Rule 5.b.ii, if the party does not submit to cross examination the Hearing Officer must not rely on any statement of that party in reaching a determination regarding responsibility.
- 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 request 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, 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

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 appropriate Sanctioning Officer, as specified in the Policy, 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 Standards and Integrity;
  - 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 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, 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. The written determination of the Hearing Officer may be appealed as set forth in Section VII.D of the Policy.
- b. 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.
- c. In the case of faculty, 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 filed by any party under section VII.E of the Policy or (ii) the deadline to file an appeal under section VII.E of the Policy 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 consistent with the procedures in section VII.D of the Policy. 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). 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.