



## **Procedures for Resolution of Reports Against Students Under Cornell University Policy 6.4 for the Following Acts of Prohibited Conduct:**

- Dating Violence;
- Domestic Violence;
- Sexual Assault;
- Sexual Exploitation;
- Sexual and Gender-Based Harassment;
- Stalking;
- Aiding Prohibited Conduct;
- Attempting to Commit Prohibited Conduct;
- Retaliation; and
- Violating an Interim Measure

These procedures apply to all units of the University except for Weill Cornell Medicine, which will administer Policy 6.4 under Weill Cornell Medicine procedures.

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## **I. DEFINITIONS OF PROHIBITED CONDUCT**

### **A. Aiding Prohibited Conduct**

A person aids prohibited conduct if, with the intent to promote or facilitate such conduct, that person helps another person commit the prohibited conduct.

### **B. Attempting to Commit Prohibited Conduct**

A person attempts to commit prohibited conduct if, with the intent to commit such conduct, that person engages in conduct directly tending toward completion of the prohibited conduct.

### **C. Dating Violence**

Dating violence is any intentional act or threatened act of violence against the complainant committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant.

Dating violence also may take the form of behavior that seeks to establish power and control over the complainant by causing the complainant to fear violence to themselves or another person. Such behavior may take the form of harassment, property damage, intimidation, and violence or a threat of violence to one's self (i.e., the respondent) or a third party. It may involve one act or an ongoing pattern of behavior.<sup>1</sup>

### **D. Domestic Violence**

Domestic violence is any intentional act or threatened act of violence against the complainant committed by (1) a current or former spouse or intimate partner; (2) a person with whom the complainant shares a child; or (3) anyone who is protected from the respondent's acts under the domestic or family violence laws of New York.

Domestic violence also includes behavior that seeks to establish power and control over the complainant by causing the complainant to fear violence to themselves or another person.

Such behavior may take the form of harassment, property damage, intimidation, and violence or a threat of violence to one's self (i.e., the respondent) or a third party. It may involve one act or an ongoing pattern of behavior.<sup>2</sup>

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<sup>1</sup> Consistent with the Violence Against Women Act (VAWA), for reporting purposes under the Clery Act, the University will evaluate the existence of an intimate relationship based upon the complainant's statement, taking into consideration the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

<sup>2</sup> This definition is consistent with VAWA.



## E. Retaliation

Retaliation is adverse action taken against an individual for making a good faith report of prohibited conduct or participating in any investigation or proceeding under these procedures. Retaliation may include intimidation, threats, coercion, or adverse employment or educational actions. Retaliation may be found even when an underlying report made in good faith was not substantiated. Retaliation may be committed by the respondent, the complainant, or any other individual or group of individuals. Retaliation does not include good faith actions pursued in response to a report of prohibited conduct.

## F. Sexual Assault

Sexual assault is (1) sexual intercourse or (2) sexual contact (3) without affirmative consent.

### (1) Sexual intercourse

Sexual intercourse means any penetration, however slight, with any object or body part, as follows: (a) penetration of the vulva by a penis, object, tongue, or finger; (b) anal penetration by a penis, object, tongue, or finger; and (c) any contact, no matter how slight, between the mouth of one person and the genitalia of another person.

### (2) Sexual contact

Sexual contact means intentional sexual touching, however slight, with any object or body part, whether directly or through clothing, as follows: (a) intentional touching of the lips, breasts, buttocks, groin, genitals, inner thigh, or anus or intentionally touching another with any of these body parts; (b) making another touch anyone or themselves with or on any of these body parts; and (c) intentional touching of another's body part for the purpose of sexual gratification, arousal, humiliation, or degradation.

### (3) Affirmative consent

Affirmative consent is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression.

The following are principles that apply to the above definition of affirmative consent:

- Consent to any sexual act or prior consensual sexual activity does not necessarily constitute consent to any other sexual act.
- Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
- Consent may be withdrawn at any time.
- When affirmative consent is withdrawn or can no longer be given, sexual activity must stop.
- A person is incapable of affirmative consent when they are:
  - Less than seventeen years of age;
  - Mentally disabled (a person is mentally disabled when their normal cognitive, emotional, or behavioral functioning renders them incapable of appraising their conduct); or
  - Incapacitated.



- A person is incapacitated when they lack the ability to choose knowingly to participate in sexual activity.
  - A person is incapacitated when they are unconscious, asleep, involuntarily restrained, physically helpless, or otherwise unable to provide consent.
  - Someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent depending on the level of intoxication.
  - Affirmative consent cannot be gained by taking advantage of the incapacitation of another. In evaluating affirmative consent in cases of alleged incapacitation, the fact finder asks two questions: (1) did the person initiating the sexual activity alleged to be nonconsensual know that the other party was incapacitated? If not, (2) should a sober, reasonable person in the same situation have known that the other party was incapacitated? If the answer to either of these questions is “yes,” affirmative consent was absent.
  - If the fact finder determines based on a preponderance of the evidence that both parties were incapacitated, the person who initiated the sexual activity alleged to be nonconsensual due to incapacity is at fault.
- Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.
  - Examples of coercion and intimidation include using physically or emotionally manipulative conduct against the complainant or expressly or implicitly threatening the complainant or a third party with negative actions that would compel or induce a reasonable person in the complainant’s situation to engage in the sexual activity at issue. Examples of sexual coercion include statements such as “I will ruin your reputation,” or “I will tell everyone,” or “your career (or education) at Cornell will be over” or “I will post an image of you naked.”
  - Examples of force or a threat of harm include using physical force or a threat, express or implied, that would place a reasonable person in the complainant’s situation in fear of physical harm to, or kidnapping of, themselves or another person.

## **G. Sexual Exploitation**

Sexual Exploitation is any of the following:

- Observing another person when that person is nude or engaged in sexual activity without the knowledge and consent of the person observed or allowing another to observe consensual sexual activity without the knowledge and consent of all parties involved;
- Making, sharing, posting, streaming or otherwise distributing any image, photography, video, or audio recording depicting or otherwise recording another person when that person is nude or engaged in sexual activity without the knowledge and consent of the person depicted or recorded;
- Exposing one's genitals to another person without the consent of that person;
- Exposing another person to a sexually transmitted infection without the knowledge and consent of the person exposed; and
- Causing another person to become incapacitated with the intent of making that person vulnerable to nonconsensual sexual assault or sexual exploitation.

## **H. Sexual and Gender-Based Harassment**

Sexual Harassment is any unwelcome sexual advance, request for sexual favors, or other unwanted conduct of a sexual nature, whether verbal, nonverbal, graphic, physical, or otherwise, when the conditions outlined in (1) or (2), below, are present.



Gender-Based Harassment is harassment based on gender, sex, sexual orientation, gender identity, or gender expression, which may include acts of aggression, intimidation, or hostility, whether verbal, nonverbal, graphic, physical, or otherwise, even if the acts do not involve conduct of a sexual nature, when the conditions outlined in (1) or (2), below, are present.

(1) Submission to or rejection of such conduct is made, either explicitly or implicitly, a term or condition of a person's employment, academic standing, or participation in any University programs or activities or is used as the basis for University decisions affecting the individual (often referred to as "quid pro quo" harassment); or

(2) Such conduct creates a hostile environment. A hostile environment exists when the conduct is sufficiently severe, persistent, or pervasive that it unreasonably interferes with, limits, or deprives an individual's participating in or benefitting from the University's education or employment programs or activities. Conduct must be deemed severe, persistent, or pervasive from both a subjective and an objective perspective.

In evaluating whether a hostile environment exists, the University will consider the totality of known circumstances, including, but not limited to:

- The frequency, nature, and severity of the conduct;
- Whether the conduct was physically threatening;
- The effect of the conduct on the complainant's mental or emotional state;
- Whether the conduct was directed at more than one person;
- Whether the conduct arose in the context of other discriminatory conduct;
- Whether there is a power differential between the parties; and
- Whether the conduct implicates concerns related to academic freedom or protected speech.

Because of protections afforded by academic freedom, speech and other expression occurring in the context of instruction or research will not be considered sexual harassment or gender-based unless this speech or expression also meets one or both of the following criteria:

- it is meant to be either abusive or humiliating toward a specific person or persons, or
- it persists despite the reasonable objection of the person or persons targeted by the speech.

## **I. Stalking**

Stalking is engaging in a course of conduct directed at a specific person that would cause a reasonable person to (a) fear for their safety or the safety of others or (b) suffer substantial emotional distress.

- Course of conduct means two or more acts, including but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.



- Reasonable person means a reasonable person under similar circumstances and with similar identities to the complainant.<sup>3</sup>
- Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

## **J. Violating an Interim Measure**

A person violates an interim measure if the measure is an order by a University official and the person to whom the order applies knowingly violates any of the conditions of the order. One common example of an order by a University official is a “no-contact” order.

## **II. EFFECTIVE DATE OF THESE PROCEDURES**

The effective date of these procedures is August 1, 2016.

These procedures will apply in all cases where a Formal Complaint of prohibited conduct under these procedures is made on or after August 1, 2016.

Where the date of the alleged prohibited conduct precedes the effective date of these procedures, the definitions of prohibited conduct in existence at the time of the alleged conduct will be used. These procedures, however, will be used to investigate and resolve all Formal Complaints made on or after the effective date of these procedures, regardless of when the conduct occurred.

## **III. DEFINITION OF STUDENT**

The term student will be interpreted to mean any person, whether or not incidentally on the University payroll, who is currently registered with the University as a degree or non-degree-seeking candidate in any of Cornell University’s undergraduate or graduate divisions.<sup>4</sup>

The term student will be interpreted also to mean persons not officially registered, and not faculty members or other University employees, if they are:

- currently enrolled in or taking classes at the University;
- currently using University facilities or property, or the property of a University-related residential organization, in connection with academic activities; or
- currently on leave of absence or under suspension from being a student of the University.

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<sup>3</sup> This definition is consistent with VAWA.

<sup>4</sup> For complaints against graduate or undergraduate teaching or research assistants arising out of performance of academic assignments, Policy 6.4 procedures governing faculty apply.





## A. Designation as Complainant and Respondent

A person who is the subject of a report or initiates a Formal Complaint of prohibited conduct under these procedures will be designated as the “complainant.” A student against whom such a report or Formal Complaint has been made will be designated the “respondent.” Both the complainant and respondent are referred to as “party” or “parties” throughout these procedures.

## IV. JURISDICTION<sup>5</sup>

These procedures will apply to prohibited conduct by a student on any campus of the University, on any other property or facility used by it for educational purposes, or on the property of a University-related residential organization.<sup>6</sup>

All actions by a student that involve the use of the University computing and network resources from a remote location, including but not limited to accessing email accounts, will be deemed to have occurred on campus.

These procedures will apply regardless of the location of the conduct where the President or their designated representative in the person of the Title IX Coordinator determines that either:

- the alleged prohibited conduct has occurred in the context of a University program or activity; or
- the conduct poses a substantial threat to the University’s educational mission or to the health or safety of University community members, including potentially contributing to or creating a hostile environment on any campus of the University.

## V. TIME LIMIT TO FILE FORMAL COMPLAINTS

To promote timely and effective review, the University strongly encourages complainants and other persons with knowledge of possible violations of this policy to make reports as soon as possible, ideally within one year of the alleged prohibited conduct. A delay in reporting may affect the University’s ability to gather relevant and reliable information, contact witnesses, investigate thoroughly, and respond meaningfully. It may also affect the University’s ability to take disciplinary action against a student who has engaged in prohibited conduct.

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<sup>5</sup> Nothing in these procedures or Policy 6.4 will preclude the President or the President’s designee, under the authority of the Board of Trustees as expressed in the University Bylaws, from taking appropriate and lawful action for *Grave Misconduct*, pursuant to a *Presidential Override*, as set forth in the Cornell University Campus Code of Conduct.

<sup>6</sup> These procedures apply to all units of the University except for Weill Cornell Medicine, which will administer Policy 6.4 under Weill Cornell Medicine procedures.



While prompt reporting is encouraged, the University will consider as timely any Formal Complaint that is filed under these procedures as long as the respondent is a “student,” as defined by these procedures, (e.g., has not graduated or permanently left the University).

If the respondent is no longer a student at the time of the Formal Complaint, and the University is, thus, unable to pursue resolution, it will still seek to meet its Title IX obligations by providing support for the complainant and, as feasible, taking appropriate steps to end any prohibited conduct, prevent its recurrence, and address its effects.

## **VI. DEADLINES**

In computing any time period specified in these procedures, the day of the event, act, or default that initiates the period will be excluded.

## **VII. CONSOLIDATION OF REPORTS, FORMAL COMPLAINTS, AND HEARINGS UNDER THESE PROCEDURES**

Generally, at the discretion of the Title IX Coordinator, multiple reports or Formal Complaints against a respondent under these procedures that are factually related will be joined in one investigation.

At the discretion of the Hearing Chair, in consultation with the investigator, multiple investigations under these procedures may be joined in one hearing if doing so is likely to result in more efficient and reliable outcomes without causing prejudice to a party or parties or confusion for the fact finders. Investigations may be so joined where they involve either multiple complainants or multiple respondents. In determining whether to consolidate, the Hearing Chair will provide the parties with an opportunity to explain their preferences for consolidated or severed hearings.

In all hearings involving multiple parties, the Hearing Panel will consider singly the sanctions and remedies appropriate for each party.

## **VIII. THE UNIVERSITY’S RESPONSE TO A REPORT OF PROHIBITED CONDUCT**

### **A. Initial Assessment**

Upon receipt of a report by a complainant of alleged prohibited conduct by a student, the Title IX Coordinator<sup>7</sup> will make an initial assessment of the reported information and respond to any immediate health or safety concerns raised by the report.

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<sup>7</sup> Throughout these procedures, various University officials, such as the Title IX Coordinator, are assigned responsibility for performing specific functions. Named officials are authorized to delegate



The Title IX Coordinator will ensure that the complainant receives a written explanation of all available resources and options and is offered the opportunity to meet promptly with the Title IX Coordinator to discuss those resources and options.

In the initial assessment and meeting or correspondence with the complainant, the Title IX Coordinator will:

- A. Assess the complainant's safety and well-being and offer the University's support and assistance through available resources;
  - B. Inform the complainant that the Title IX Coordinator will maintain complainant's privacy to the greatest extent possible and disclose information only as necessary pursuant to these procedures;
  - C. Inform the complainant of their right to seek medical treatment (including a sexual assault forensic examination) and explain the importance of obtaining evidence and preserving forensic and other evidence;
  - D. Inform the complainant of their right to contact law enforcement, be assisted by University officials in contacting law enforcement, or decline to contact law enforcement, and their right to seek a protective order;
  - E. Inform the complainant that the criminal justice system uses different standards of proof and evidence than these procedures and that any questions about whether the reported prohibited conduct constitutes a penal law violation should be addressed by law enforcement;
  - F. Inform the complainant about University and community resources, including counseling, health, and mental health services; victim advocacy; procedural advocacy; legal resources; visa and immigration assistance; student financial aid; and other resources both on campus and in the community, and how to request or contact such resources;
  - G. Inform the complainant of the right to seek appropriate and available Interim Measures and how to request such measures (see XIV: INTERIM MEASURES);
  - H. Inform the complainant of the right to file a Formal Complaint and seek resolution under these procedures; provide the complainant with an overview of these procedures, including Alternate Resolution (where appropriate); and inform the complainant of the right to withdraw a Formal Complaint at any time and to decline or discontinue resolution under these procedures at any time, but that declining to participate in an investigation and/or the adjudicatory process under these procedures may limit the University's ability to investigate meaningfully and respond to a report of prohibited conduct;
  - I. As possible and appropriate, ascertain the complainant's preference for pursuing formal resolution, Alternate Resolution, or neither under these procedures, and discuss with the complainant any concerns or barriers to participating in any investigation and resolution process under these procedures;
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responsibility to other appropriate University officials except where such delegation contravenes University policy. Additionally, named officials and their designees may consult with appropriate University officials, the Office of University Counsel, and subject-matter experts.



- J. Explain that the University prohibits retaliation, that retaliation constitutes prohibited conduct under these procedures, and that the University will take appropriate action in response to any act of retaliation;
- K. Inform the complainant of their rights afforded under the *Student Bill of Rights and Your Rights Statement*; and
- L. Communicate with appropriate University officials to determine whether the report triggers any Clery Act obligations, including the entry of the report in the daily crime log and/or issuance of a timely warning, and take steps to meet those obligations.

1. Where a Potential Complainant's Identity Is Unknown

Where a report is filed but the identity of the potential complainant is unknown, the Title IX Coordinator will assess the nature and circumstances of the report, including whether it provides information that identifies the potential complainant, the potential respondent, any witnesses, and/or any other third party with knowledge of the reported incident, and take reasonable and appropriate steps to respond to the report of prohibited conduct consistent with applicable federal and state laws and these procedures.

## **B. The University's Actions Following an Initial Assessment**

Upon completion of the Initial Assessment, the Title IX Coordinator will determine the course of action under these procedures as follows:

1. Where the Complainant Seeks Resolution Under These Procedures

In any case where the complainant reports prohibited conduct and requests resolution under these procedures, the Title IX Coordinator will promptly initiate an investigation. This process begins with the complainant making a signed, written Formal Complaint.

Ordinarily, degrees will not be awarded to a respondent while a Formal Complaint under these procedures is pending. (The University may withhold awarding a degree otherwise earned until the adjudication process set forth in these procedures is complete, including the satisfaction of any sanctions imposed.)

2. Where the Complainant Requests Confidentiality and/or That No Resolution Be Pursued Under These Procedures

The University strongly supports a complainant's desire for confidentiality or decision not to pursue resolution under these procedures.

If the complainant requests confidentiality, the University will honor the complainant's request if doing so does not impact the University's ability to provide a safe and non-discriminatory environment for all members of the University community, including the complainant.

Regardless of whether the complainant requests confidentiality, the Title IX Coordinator will assist the complainant with reasonable and available accommodations, which may include academic, housing, transportation, employment, and other accommodations. (See, XIV: INTERIM MEASURES)

These accommodations will vary depending on the nature of the reported prohibited conduct and the wishes of the complainant regarding confidentiality. If any such accommodation impacts the



respondent, the respondent will be provided with written notice of the report, which includes, as known, the date, time, and location of the alleged prohibited conduct and the underlying factual allegations. Therefore, certain accommodations may not be available if the complainant wishes to maintain confidentiality.

The Title IX Coordinator may also take proactive steps, such as training or awareness efforts, to address sexual and interpersonal violence in a general way that does not identify the complainant.

Where a complainant does not wish to pursue resolution under these procedures, the University will honor the complainant's wishes unless doing so would not adequately mitigate the risk of harm to the complainant or other members of the University community. The Title IX Coordinator will consider the following factors, among others, when determining whether to honor the complainant's wish that no resolution be pursued under these procedures:

1. Whether the respondent has a history of violent behavior or is a repeat offender;
2. Whether the incident represents escalation in unlawful conduct by the respondent from previously noted behavior;
3. The increased risk that the respondent will commit additional acts of violence;
4. Whether the respondent used a weapon or force;
5. Whether the complainant is a minor;
6. Whether the University possesses other means to obtain evidence such as security footage; and
7. Whether available information reveals a pattern of perpetration at a given location or by a particular group.

Where a complainant declines to participate in an investigation, the University's ability to meaningfully investigate and respond to a report may be limited.

### 3. University Determination That Complainant's Request(s) Can Be Honored

Where the Title IX Coordinator determines that the University can honor a complainant's request that no resolution be pursued under these procedures, the University may nevertheless take other appropriate steps designed to eliminate the reported prohibited conduct, prevent its recurrence, and address its effects on the complainant and the University community. Those steps may include offering the complainant reasonable and available accommodations as detailed above and in XIV: INTERIM MEASURES, conducting targeted prevention and awareness training, and/or providing or imposing other remedies tailored to the circumstances.

The complainant may later choose to pursue a resolution under these procedures within time limits.

Upon receipt of new or additional information, the Title IX Coordinator may reconsider the complainant's request that no resolution be pursued under these procedures and initiate the resolution process, as explained directly below.

### 4. University Determination That a Complainant's Request(s) Cannot Be Honored

Where the Title IX Coordinator determines that the University cannot honor a complainant's request that no resolution be pursued under these procedures, the Title IX Coordinator will promptly initiate the resolution process under these procedures by making a signed, written Formal Complaint on behalf of the University.



The Title IX Coordinator will notify the complainant that the University intends to proceed with a Formal Complaint and will take immediate action as necessary to protect and assist the complainant.

The Title IX Coordinator will make reasonable efforts to protect the privacy of the complainant. However, typically, the complainant's identity would have to be disclosed as part of the University's investigation.

The complainant is not required to participate in any proceedings that follow. However, if the complainant declines to participate in an investigation and/or the adjudicative process under these procedures, the University's ability to investigate meaningfully and respond to a report of prohibited conduct may be limited.

## **IX. NOTICE TO COMPLAINANT AND RESPONDENT OF UNIVERSITY ACTIONS**

The Title IX Coordinator will promptly inform the complainant of any actions undertaken by the University, including the filing of a Formal Complaint.

The Title IX Coordinator will promptly inform the respondent of any actions that will directly impact the respondent, including the filing of a Formal Complaint or the imposition of Interim Measures that would directly impact the respondent, and provide an opportunity for the respondent to respond to such action(s). (See XIV. INTERIM MEASURES). Interim Measures become effective when notice of the Interim Measures is provided.

Upon the issuance of a Formal Complaint, The Title IX Coordinator will provide both parties with a copy of the Formal Complaint, Policy 6.4, these procedures, and written notices as set forth in IX: NOTICE TO COMPLAINANT AND RESPONDENT OF UNIVERSITY ACTION.

## **X. ADVISORS AND SUPPORT PERSONS**

At all stages under these procedures, both the complainant and respondent will be afforded the assistance of an advisor provided by the University to assist and advise the party.

As an alternative or in addition to utilizing an advisor offered by the University, each party has the right to select and consult with an advisor of their own choosing. This advisor may be any person, including an attorney, who is not a party or witness or otherwise involved in the case.

An advisor may accompany the party to all meetings, such as investigative interviews, and proceedings, but may not speak on the party's behalf or otherwise interfere with meetings or proceedings.

During hearings, an advisor may confer with the party, and on the party's behalf, may submit written requests and objections to the Hearing Chair.

An advisor may also help the party prepare written submissions.

By accepting the role of advisor, all advisors agree to comply with the rules and processes set forth in Policy 6.4 and these procedures, including rules regarding confidentiality.



The University will not interfere with the parties' rights to have an advisor of their choice and fully expects advisors to adhere voluntarily to Policy 6.4 and these procedures. In extreme cases, where either the Title IX Coordinator or Hearing Chair determines that an advisor's conduct undermines the integrity of Policy 6.4 or these procedures, the advisor will be prohibited from continuing to serve as advisor in that case. The affected party will be permitted to obtain a substitute advisor.

Both the complainant and respondent also have the right to a support person of their choice to provide emotional support to the party. The support person may accompany the party to any meetings or proceedings, but may not be a witness at any hearing and may not speak on behalf of the party.

If the Title IX Coordinator determines that an advisor or support person has a conflict of interest, the advisor or support person will be prohibited from continuing in their role. The affected party will be permitted to obtain a substitute advisor or support person.

## **XI. PRESERVATION OF INFORMATION AND TANGIBLE MATERIAL**

Preservation of information and tangible material relating to alleged prohibited conduct is essential for investigations under these procedures as well as law enforcement investigations. Therefore, all persons involved in these procedures, whether as the complainant, the respondent, or a witness, are encouraged to preserve all information and tangible material relating to the alleged prohibited conduct. Examples of evidence include electronic communications (e.g., email and text messages), photographs, clothing, and medical information.

In the case of medical information, prompt examinations can be crucial to the collection of forensic or other medical evidence. Individuals who believe they have experienced sexual assault or other forms of prohibited conduct are strongly encouraged to seek immediate medical attention.

## **XII. OBLIGATION TO PROVIDE TRUTHFUL INFORMATION**

At all stages of the process, all Cornell University community members are expected to provide truthful information. "Furnishing false information to the University with intent to deceive" is prohibited and subject to disciplinary sanctions under Cornell University's Campus Code of Conduct (Title III, Article II, Section A, subsection e). This provision does not apply to reports made or information provided in good faith, even if the facts alleged are not later substantiated.

## **XIII. DUTY TO COOPERATE**

All members of the University community are expected to cooperate and participate in inquiries, investigations, and resolutions of reports and Formal Complaints of prohibited conduct under these procedures. If a prospective witness refuses to cooperate, the Judicial Administrator may elect to commence action under the Campus Code, which includes as a violation "to refuse to participate, without a substantial reason, as a witness in the campus judicial system" (see Article II, A3k). (See XX: THE PARTIES' PARTICIPATION IN THE INVESTIGATION AND HEARING).





## XIV. INTERIM MEASURES

Following a report of prohibited conduct, the complainant and respondent will be provided information about a range of resources, support services, and measures to protect the safety and well-being of the parties and promote an accessible educational environment. Some such measures are Interim Measures, which are utilized pending resolution of a case under these procedures.

Interim Measures might be in the form of support or accommodations for or restrictions upon one or both parties.

Restrictive Interim Measures will be calibrated to address a perceived risk, but tailored to minimize to the extent possible the impact on the affected party or parties, whose underlying case of prohibited conduct has not yet been adjudicated on the merits.

Interim Measures are designed to accomplish a number of goals:

- to support and protect the safety of the complainant, the respondent, the University's educational environment, and the University community;
- to deter retaliation; and
- to preserve the integrity of the investigation and resolution process pursuant to these procedures.

Interim Measures may be issued based upon a party's request or at the University's own initiative. In all instances, the University will, at its discretion, determine whether any given Interim Measure is reasonable and appropriate.

Interim Measures are available regardless of whether a Formal Complaint has been filed under these procedures, with the exception of a Temporary Suspension, which may be imposed only if a Formal Complaint has been filed.<sup>8</sup>

Interim Measures are available regardless of whether the complainant chooses to report the prohibited conduct to law enforcement.

Interim Measures become effective when notice of the Interim Measures is provided.

Where a Formal Complaint has been filed, typically, Interim Measures will remain in place pending the resolution of the Formal Complaint.

Violations of Interim Measures that are orders by a University official constitute prohibited conduct under these procedures.

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<sup>8</sup> There are a number of requirements that apply to Temporary Suspensions.





## **A. Examples of Interim Measures**

Potential Interim Measures include but are not limited to:

- assistance obtaining access to counseling, advocacy, or medical services;
- assistance obtaining access to academic support and requesting academic accommodations;
- changes in class schedules;
- assistance requesting changes in work schedules, job assignments, or other work accommodations;
- changes in campus housing;
- safety escorts;
- “No-contact” orders (curtailing or prohibiting contact or communications between or among individuals); and
- Temporary Suspensions.

## **B. Issuance of Interim Measures**

The Title IX Coordinator is responsible for issuing Interim Measures.<sup>9</sup>

Interim Measures will be designed in a fair manner and narrowly tailored to minimize to the extent possible any restrictions on those affected.

In issuing Interim Measures, the Title IX Coordinator will make reasonable efforts to communicate with the parties to address safety and emotional and physical well-being concerns.

Interim Measures are not, in and of themselves, permanent resolutions under these procedures. Rather, they are actions taken by the University based on information known at the time that the Interim Measures are issued. Accordingly, the Title IX Coordinator has the discretion to issue, modify, or remove any Interim Measure at any time additional information is gathered or circumstances change.

## **C. Requested Review of Title IX Coordinator’s Decisions Regarding Interim Measures (Excluding Temporary Suspensions)**

Both parties may at any time request that the Title IX Coordinator issue, modify, or remove Interim Measures based upon a change in circumstance or new information that would affect the necessity of any Interim Measures.

Both parties may petition the Vice President of Student and Campus Life (SCL) in writing to review the Title IX Coordinator’s decision whether to issue, modify, or remove Interim Measures. A party may seek such review only if the Interim Measure directly impacts that party. A party seeks review by submitting a letter explaining the reason for their request for review and including any written evidence in support of

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<sup>9</sup> The power to impose a Temporary Suspension rests with the President, who may delegate to the Title IX Coordinator or other University official the authority to impose a Temporary Suspension.



such request. The materials should be submitted to the Title IX Coordinator, who will forward all materials to the Vice President, SCL. The Title IX Coordinator will also inform the non-petitioning party that a request has been filed and provide a copy of the request to that party.

If, based upon the request, the Vice President, SCL, is considering issuing, modifying, or removing an Interim Measure, the Vice President, SCL, will invite the non-petitioning party and the Title IX Coordinator to submit responses. The Vice President, SCL, will establish a reasonable timeline for handling the matter, including deadlines for submissions.

If the Vice President, SCL, determines that the Title IX Coordinator's decision should be set aside, the Vice President, SCL, will instruct the Title IX Coordinator to vacate the prior decision on Interim Measures immediately. At that time, the Title IX Coordinator may impose alternate reasonable and appropriate Interim Measures. The Vice President, SCL, may, but is not required to, provide the Title IX Coordinator with guidance regarding appropriate alternate Interim Measures.

The Vice President, SCL, will provide a written decision to the parties and the Title IX Coordinator.

The decision of the Vice President, SCL, is final; there is no right to appeal.

#### **D. Temporary Suspensions Pending Resolution**

Once a Formal Complaint has been filed, in extraordinary circumstances, where immediate action is necessary to protect the complainant or University community, the President or the President's designated representative in the form of the Title IX Coordinator or other appropriate University official will have discretionary power to suspend the respondent pending resolution of the underlying case.

Suspension may include the withdrawal of any or all University privileges and services, including class attendance, participation in examinations, and utilization of University premises and facilities, as determined by the President or designee.

Understanding that the underlying allegation of prohibited conduct has not been adjudicated on the merits, a Temporary Suspension may be imposed only when less restrictive Interim Measures are deemed insufficient to protect the complainant or University community.

In determining whether a Temporary Suspension is appropriate, the following factors, among others, should be considered:

- whether the respondent has a history of violent behavior or is a repeat offender;
- whether the incident represents escalation in unlawful conduct by the respondent from previously noted behavior;
- whether there are facts indicating a risk that the respondent will commit additional acts of violence; and
- whether the respondent used a weapon or force.

Both parties may at any time request that the Title IX Coordinator or other University official acting as the President's designee impose, modify, or lift a Temporary Suspension based upon a change in circumstance or new information that would affect the necessity of a Temporary Suspension.



## **E. Review of a Temporary Suspension**

The Policy 6.4 Appeal Panel will conduct the review of a decision to impose a Temporary Suspension.

Both parties may petition the Appeal Panel in writing for a review of the decision whether to impose, modify or lift a Temporary Suspension.

The petitioning party commences the review by submitting a petition explaining the reason for their request and including any written evidence in support of such request. The materials should be submitted to Title IX Coordinator, who will forward all materials to the Appeal Panel. The Title IX Coordinator will also inform the non-petitioning party that a petition has been filed and provide a copy of the petition to that party.

The non-petitioning party may submit a written response, but is not required to do so. The response should be submitted to the Title IX Coordinator. Any written response must be submitted within three (3) business days of receipt of the petition. The Title IX Coordinator will offer a written response to such petition within four (4) business days of receipt of the petition. For good cause, the Appeal Panel may grant requests for extensions.

The Appeal Panel will consider the petition no later than five (5) business days after it receives the petition, with exceptions for good cause. However, given the gravity of the measure, it is expected that an Appeal Panel will seek to meet this deadline when a Temporary Suspension has already been imposed.

If the Appeal Panel determines that good cause was not shown for the Temporary Suspension or that circumstances have changed so that the suspension is no longer necessary, it will instruct the Title IX Coordinator to lift the Temporary Suspension immediately. At that time, the Title IX Coordinator may impose alternate reasonable and appropriate Interim Measures. The Appeal Panel may, but is not required to, provide the Title IX Coordinator with guidance regarding appropriate alternate Interim Measures.

The Appeal Panel will provide a written decision to the parties and the Title IX Coordinator as soon as practicable.

The Appeal Panel's decision is final; there is no right to appeal.

Where the Appeal Panel has already entertained a petition and issued a decision regarding a Temporary Suspension, it may decline a party's request to review a determination regarding a change of circumstance or new information.

## **F. Assistance with Orders of Protection**

Orders of Protection are court orders and, thus, the University is not able to issue them. However, the Cornell University Police Department (CUPD) (607-255-1111) will assist both the respondent and the complainant (or any member of the Cornell community impacted by an Order of Protection), by helping the parties understand the availability of an order, the potential content and parameters of an order, and the consequences for violating an order.



The CUPD will also assist a protected party in effecting arrest of an individual violating an Order of Protection, if doing so is within the jurisdiction of CUPD.

## **XV. PENDING CRIMINAL INVESTIGATIONS**

In cases where there is a criminal investigation, the University process will run concurrently with such investigation. The University may grant temporary delays reasonably requested by law enforcement for evidence gathering.

## **XVI. NOTICE TO PARTIES UPON THE ISSUANCE OF A FORMAL COMPLAINT**

At the issuance of a Formal Complaint, the Title IX Coordinator will notify the complainant and the respondent, in writing, of the commencement of an investigation and provide both parties with a copy of the Formal Complaint, Policy 6.4, and these procedures. Such notice will:

- identify the complainant and the respondent;
- specify the alleged prohibited conduct and its date, time, and location, to the extent known;
- specify the factual allegations pertaining to the prohibited conduct;
- specify any sanctions that may be imposed, including the University's transcript notation policy;
- identify the investigator;
- include information about the parties' respective rights and obligations under Policy 6.4 and these procedures;
- inform the parties of their right to seek the assistance of an advisor provided by the University, a second advisor (including an attorney), and a support person for emotional support, all of whom may accompany the respective parties to meetings and proceedings;
- inform the parties of the range of available resources, including mental health and academic support resources;
- explain the prohibition against retaliation; and
- instruct the parties to preserve any potentially relevant evidence, whatever its form.

## **XVII. DISMISSAL**

At any time, the Title IX Coordinator or the investigator may dismiss a Formal Complaint and close a case where:

- there is no jurisdiction under these procedures;
- the facts set forth in the Formal Complaint do not constitute prohibited conduct under these procedures; or
- the complainant fails or refuses to cooperate with the investigation such that the investigator is unable to investigate despite reasonable measures, including where the complainant cannot be located, the complainant fails or refuses to be available for interviews or meetings, or the complainant fails to provide necessary information.

After investigation, the Title IX Coordinator or the investigator may dismiss a Formal Complaint and close a case where a Formal Complaint is not supported by sufficient facts based upon the available evidence.



If the Title IX Coordinator or the investigator determines that a Formal Complaint should be dismissed, they will provide the complainant with a written decision explaining the reason for the dismissal and notify the respondent of the dismissal.

The complainant will be given an opportunity to seek review by a Hearing Panel. The complainant must commence the review within ten (10) business days by submitting a letter explaining why they think the dismissal is erroneous and including any written evidence in support of their position. The materials should be submitted to the Title IX Coordinator, who will forward them to the Hearing Panel and Hearing Chair (who provides guidance to the Hearing Panel but does not have a vote in a decision).

The Title IX Coordinator will also inform the respondent that a request for review has been filed and provide a copy of the complainant's letter and any supporting materials to the respondent.

The Hearing Chair in consultation with the Hearing Panel will establish a reasonable process and timeline for handling the matter. The respondent will be given an opportunity to respond to the complainant's request for review.

The Hearing Panel will conduct its review based upon a standard of clearly erroneous, meaning that the Hearing Panel will not disturb the Title IX Coordinator's or investigator's decision by substituting its own judgment for the judgment of the Title IX Coordinator or investigator unless the Hearing Panel determines that the dismissal was clearly in error.

If the Hearing Panel determines that the dismissal was clearly erroneous, the Formal Complaint will be reinstated and resolved according to these procedures.

If the Hearing Panel determines that the dismissal was not clearly erroneous, it will affirm the dismissal.

The Hearing Panel will provide a written decision to the parties and the Title IX Coordinator.

The decision of the Hearing Panel is final; there is no right to appeal.

## **XVIII. ALTERNATE RESOLUTION**

At any time after a Formal Complaint has been filed and before a hearing commences, the parties may seek to resolve a report of prohibited conduct through Alternate Resolution, an administrative process.

Participation in Alternate Resolution is entirely voluntary; the Title IX Coordinator will neither pressure nor compel either party to participate in the process nor to agree to any specific terms.

In every case, the Title IX Coordinator has discretion to determine whether the matter is appropriate for Alternate Resolution and to determine the appropriate terms.

Alternate Resolution will not involve mediation, or any face-to-face meetings, between the complainant and the respondent.

Before the Title IX Coordinator approves the Alternate Resolution process or the terms of any Alternate Resolution, the Title IX Coordinator will determine that it has sufficient information about the matter to make these decisions.



Before the Alternate Resolution process commences, both the complainant and the respondent must agree to explore Alternate Resolution as a potential means of resolution.

The parties are strongly encouraged, although not required, to consult with their advisors and any support persons during the entire Alternate Resolution process.

If the process is terminated for any reason, the matter will be returned to the Formal Complaint resolution process under these procedures. For this reason, the investigator will not participate in Alternate Resolution.

The Title IX Coordinator will oversee the Alternate Resolution process and have access to all University records in the matter, including any records or reports prepared during an investigation.

The Title IX Coordinator will consult separately with both parties and recommend to the parties the terms of a potential Alternative Resolution agreement. Such terms may include, but are not limited to, any sanctions or remedies that could be imposed by a Hearing Panel after a hearing under these proceedings.

Both parties must agree to the terms before an Alternate Resolution agreement becomes effective.

At any time before a written agreement is effective (see below), the complainant or the respondent may withdraw from the Alternate Resolution process, and the Title IX Coordinator may also, at their discretion, terminate the process.

If the respondent agrees to an Alternate Resolution that provides for a suspension, withdrawal, or dismissal (i.e. expulsion) from the University, there will be a transcript notation consistent with University policy.

If both parties are satisfied with the Title IX Coordinator's recommendation, the matter will be resolved with a written agreement.

The Title IX Coordinator will provide each party, separately, with a copy of the proposed agreement for the party to review, sign, and return. (Ordinarily, signed copies are not exchanged.)

Once a party has returned the signed agreement to the Title IX Coordinator, the party has two (2) business days to reconsider and withdraw from the agreement by notifying the Title IX Coordinator in person or in writing.

Within the two (2) business days, if either party withdraws from the agreement, the matter would be returned for resolution of the Formal Complaint.

After the two (2) business days, if neither party withdraws, the terms of the agreement will become effective and the Title IX Coordinator will promptly notify both parties in writing that the agreement is final.

Once the agreement is effective, the parties may not appeal the agreement.

If the respondent were alleged to violate the Alternate Resolution agreement, the respondent would be subject to proceedings under the Cornell University Campus Code of Conduct for noncompliance with a prescribed sanction or remedy and/or for violation of a condition of probation.



The Alternate Resolution process is confidential.

If the process is terminated and returned for resolution of the Formal Complaint, neither the Title IX Coordinator nor the parties will disclose to the Hearing Chair, Hearing Panel, or Appeal Panel either the fact that the parties had participated in the Alternate Resolution process or any information learned during the process.

## **XIX. INVESTIGATIONS**

### **A. Overview**

The investigation is designed to be timely, thorough, and impartial and provide for a fair and reliable gathering of the facts. The investigation will generally include individual interviews of the complainant, the respondent, and relevant witnesses. It culminates in a final investigative record and an investigative report, both prepared by the investigator and utilized at the hearing, if there is one.

The investigative record is a compilation of statements by the parties and witnesses as well as other evidence gathered by the investigator.

In the report, the investigator explains the scope of the investigation and summarizes and synthesizes statements by the parties and witnesses and any other evidence.

The investigator does not make any findings or recommendations as to responsibility, other than to make an assessment as to whether there is sufficient evidence for the case to proceed to a hearing to determine responsibility.

As part of the investigative process, both parties have an opportunity to review and comment upon a draft investigative record before the investigator finalizes it and issues an investigative report.

In the event of a hearing, the final investigative record and report become part of the hearing record.

At the hearing, the Hearing Panel will rely upon the final investigative record and report as well as any additional statements and information provided to the Hearing Panel pursuant to the procedures set forth below.

### **B. Investigative Process**

The investigator will gather information from the complainant, the respondent, and other individuals who have relevant information. The investigator will also gather relevant available evidentiary materials, including physical evidence, documents, communications between the parties, and other electronic records and media as appropriate.

All individuals involved in the investigation, including the complainant, the respondent, and any third-party witnesses, will be treated with sensitivity and respect.

The investigation will be completed as expeditiously as possible.





The complainant and the respondent will have an equal opportunity to be heard, submit evidence, and suggest witnesses who may have relevant information. Specifically, during the investigation, each party will have the opportunity to:

- be interviewed by the investigator;
- review their own interview statements prior to the statements being distributed to the other party and included in a draft investigative record;
- provide evidence to the investigator;
- suggest witnesses to be interviewed by the investigator; and
- review a draft investigative record and comment on it, in writing, before the investigator finalizes the record and prepares an investigative report.

The investigator has the discretion to determine the relevance of any proffered witnesses, and, accordingly, the investigator will determine which witnesses to interview.

In general, the investigator will not consider relevant any witnesses who are offered solely for the purpose of providing evidence of a party's character.

Investigative interviews with the parties and any witnesses will be audio recorded.

At the start of an interview session, the investigator will inform an interviewee that the session is being audio recorded.

Parties and witnesses will receive copies of audio recordings of their own interviews.

The parties will be provided with transcripts, but not audio recordings, of all witness and other party interviews.

The parties may listen to audio recordings of interviews of the other party and any witnesses during business hours at a secure and private campus location, with access facilitated by the Title IX Coordinator.

All persons being interviewed, including the parties, are prohibited from recording interviews.

In the event of a failure rendering an audio recording of an interview inaudible in whole or in part, the investigator will either reconstruct the interview with input from the interviewee or re-conduct the interview, as the investigator deems necessary. The reconstructed interview statement will become part of the investigative record. The failure will not constitute grounds for appeal.

Throughout the investigation, both parties will receive reasonable notice of any meetings at which their attendance is requested and the parties will be updated at regular intervals on the status of the investigation.

The investigator will establish reasonable time limits for the various stages of the investigation, including meetings and deadlines for any submissions or responses, and the parties must adhere to these time limits.

The parties may request extensions that will be granted, if reasonable, at the discretion of the investigator. Extensions granted to one party will be granted to the other party. Delays simply to prolong the process will not be permitted, and failures to meet deadlines will result in forfeiture of a party's ability to participate in that aspect of the investigation.

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If a party declines or fails to participate in a meeting or interview, provide evidence, or suggest witnesses, the party will have waived their right to do so upon the issuance of the final investigative record and report.

### **1. Use of Experts**

The investigator may consult medical, forensics, technological, or other experts or expert materials (such as writings and recordings) when the investigator determines that expertise on a topic is needed to achieve a full understanding of the issues under investigation.

The results of polygraph tests and other “lie-detection” techniques are inadmissible in the proceedings.

## **C. Draft Investigative Record and the Parties’ Review**

Upon completion of the investigation, the investigator will prepare and provide to the parties an electronic or hard copy of a draft investigative record that will include:

- transcripts (but not audio files) of all interviews by the investigator with the parties and any witnesses; and
- copies of any documents, electronic records, and media and photographs or descriptions of physical materials collected during the course of the investigation.

The parties will have five (5) business days to review the draft investigative record and submit in writing:

- comments about content, including requests for redaction;
- requests for additional meetings with the investigator; and
- requests for the investigator to conduct further investigation or questioning.

The parties’ written comments and requests will become part of the final investigative record.

The investigator has discretion whether to conduct any additional requested meetings, interviews, or questioning.

The parties may request extensions that will be granted, if reasonable, at the discretion of the investigator. Any extension granted to one party will be granted to the other party.

Delays simply to prolong the process will not be permitted and failure to make submissions within five (5) business days or any approved extensions will result in a forfeiture of the right to do so later.

## **D. Evidence to be Excluded or Redacted from the Investigative Record**

The investigator will exclude and, as necessary, redact any content that is impermissible under these procedures or applicable law. Exclusions and redactions will be noted and thereby become part of the investigative record. Any objections to the investigator’s actions regarding requested or completed redactions and exclusions may be made on appeal.

### **1. Prior Sexual History**

Generally, during both the investigation and any hearing to determine responsibility, both parties may exclude evidence of their own prior sexual history with anyone other than the other party.



## 2. Past Findings

During both the investigation and any hearing to determine responsibility, both parties may exclude evidence of their own past school disciplinary findings of dating violence, domestic violence, sexual assault, or stalking. Such findings are admissible at the stage of the hearing for determining sanctions.

## 3. Mental Health History

Generally, during both the investigation and any hearing to determine responsibility, both parties may exclude evidence of their own mental health diagnosis and/or treatment.

## 4. Sensitive Personal Identifying and Medical Records

Throughout these proceedings, sensitive personal identifying information such as Social Security numbers and irrelevant information contained in medical records will be excluded.

# E. **Final Investigative Record and Report**

The investigator will issue a final investigative record and a written report explaining the scope of the investigation and summarizing and synthesizing the facts.

In the report, the investigator, at his or her discretion, may identify contested and uncontested facts, highlight inconsistencies, address relevancy of evidence, and set forth issues of general credibility.

The investigator will not render an opinion on responsibility, other than to make a threshold determination as to whether there is sufficient evidence to proceed to a hearing (see below).

# F. **Threshold Determination by Investigator and Review by Hearing Panel**

As part of the investigative report, the investigator will make a threshold determination as to whether there is sufficient evidence to advance the case to a hearing.

If the investigator concludes that when viewing the evidence in the light most favorable to the complainant, there is no reasonable basis to find that the respondent committed the alleged prohibited conduct under these procedures or any supplemental jurisdiction, the proceedings will be terminated, the Formal Complaint dismissed, and the parties so notified.

If a Formal Complaint is dismissed, the investigator will provide the complainant with a written decision explaining the reason for the dismissal and notify the respondent of the dismissal.

The complainant will be given an opportunity to seek review by a Hearing Panel. The complainant must commence the review within ten (10) business days by submitting a letter explaining why they think the dismissal is erroneous and including any written evidence in support of their position. The materials should be submitted to the Title IX Coordinator, who will forward them to the Hearing Panel and Hearing Chair (who provides guidance to the Hearing Panel but does not have a vote in a decision).

The respondent will be informed that a request for review has been filed and provided a copy of the complainant's letter and any supporting materials.

The Hearing Chair in consultation with the Hearing Panel will establish a reasonable process and timeline for handling the matter. The respondent will be given an opportunity to respond to the complainant's request for review.



The Hearing Panel will conduct its review based upon a standard of clearly erroneous, meaning that the Hearing Panel will not disturb the Title IX Coordinator's or investigator's decision by substituting its own judgment for the judgment of the Title IX Coordinator or investigator unless the Hearing Panel determines that the dismissal was clearly in error.

If the Hearing Panel determines that the dismissal was clearly erroneous, the Formal Complaint will be reinstated and resolved according to these procedures.

If the Hearing Panel determines that the dismissal was not clearly erroneous, it will affirm the dismissal.

The Hearing Panel will provide a written decision to the parties and the Title IX Coordinator.

The decision of the Hearing Panel is final; there is no right to appeal.

## **XX. THE PARTIES' PARTICIPATION IN THE INVESTIGATION AND HEARING**

Both the complainant and the respondent may decline to participate in the investigation and/or hearing. However, the University may continue without a party's participation, reaching findings and issuing sanctions. Additionally, a party's decision not to participate in the investigation will limit the party's ability to participate in the hearing, as explained below.

### **A. Declining to Participate in the Investigation**

If a party declines to participate in investigative interviews deemed necessary by the investigator, the party will forfeit the opportunity to participate in a hearing, including making pre-hearing submissions related to the conduct of the hearing.

The party will be precluded from proposing witnesses, testifying, proposing questions/topics for all others who testify, giving a written opening statement, and giving oral and written closing statements.

The party will, however, be entitled to submit, prior to the hearing, a written or recorded Impact/Mitigation Statement.

Nonetheless, if a party who has so declined to participate in investigative interviews later seeks to participate in a hearing, the Hearing Chair, upon the Chair's discretion may permit the party to participate upon a finding that there was a compelling reason for the nonparticipation.

If the Hearing Chair permits the party to participate in the hearing, the Hearing Chair will adjourn the hearing for the investigator to interview the party, conduct any follow-up investigation, and supplement and revise the investigative record and report.

The Hearing Chair will also re-open the pre-hearing submission process so that the parties may respond to the new information.



## **B. Declining to Attend or Participate in the Hearing**

Neither party is required to attend a hearing for the hearing to proceed. If, despite being notified of the date, time, and location of the hearing, either party is not in attendance, the hearing may proceed and applicable sanctions may be imposed.

The parties are not required to testify at a hearing and the Hearing Panel will not draw a negative inference from a party's silence. However, where a party declines to testify, the Hearing Panel's ability to hear information necessary to make an informed decision in that party's favor may be limited.

## **XXI. HEARINGS**

### **A. Overview**

Findings of responsibility and determinations regarding sanctions and remedies are made through a hearing process conducted by a three (3) member Hearing Panel and a non-voting Hearing Chair.

The hearing is intended to provide the parties with a fair opportunity to present relevant information to the Hearing Panel and enable the Hearing Panel to make informed decisions regarding responsibility and sanctions/remedies.

The parties are entitled to provide brief written opening statements and oral and written closing statements and to testify.

The parties are also entitled to propose questions/topics for those testifying through a pre-hearing submission process explained below.

Throughout the hearing, the parties with their advisor(s) and support person, if applicable, will be in separate rooms. The parties will participate remotely, except when they testify.

The parties may never directly address each other.

The Hearing Panel conducts all questioning.

### **B. Hearing Notice**

At the completion of an investigation, if a case is referred to a Hearing Panel for a hearing, a Notice of Hearing will be sent to the parties as soon as practicable. The notice will include the charges at issue; a brief summary of the alleged prohibited conduct; the date, time, and place of the hearing; the name of the Hearing Chair; and, if determined, the Hearing Panel members.

If the notice does not include the name of the Hearing Panel members, the parties will be so notified, in writing, at a later time, prior to the hearing.

All efforts will be made to provide the hearing notice no later than seven (7) business days prior to the hearing and to schedule the hearing as soon as practicable.



Upon receipt of written notice of the Hearing Chair and Hearing Panel members,<sup>10</sup> if a party believes that they have a potential conflict of interest with either a Hearing Panel member or Hearing Chair, the party should notify the Title IX Coordinator, who will forward the notification to the Hearing Chair. The notification must be in writing, made within two (2) business days of the notice, and include facts substantiating the claim of conflict. The Hearing Chair has discretion whether to remove a member of the Hearing Panel or to recuse themselves.

### **C. Request to Reschedule Hearing**

Either party may request to have a hearing rescheduled. Absent extenuating circumstances, requests to reschedule must be submitted to the Title IX Coordinator at least three (3) business days prior to the hearing. A request to reschedule a hearing must be supported by a compelling reason for the delay. The Hearing Chair may also reschedule the hearing, without a request by the parties, when there is reasonable cause to do so.

### **D. Pre-Hearing Submissions by the Parties**

Prior to a hearing, the parties will be asked in writing by the Title IX Coordinator to make certain decisions and requests regarding the conduct of the hearing. This process is designed to ensure that the hearing is conducted in as equitable, respectful, and efficient a manner as possible.

There are two stages at which the parties will be asked to make decisions/requests.

- First, the parties will be asked to submit in writing (1) opening statements and (2) names of any requested witnesses.
- Second, once witnesses are approved, the parties will be asked to submit in writing any proposed questions or topics for individuals who might testify, as explained below.

The parties will also be asked to submit a written or recorded Impact/Mitigation Statement, which may be submitted up to the start of the hearing.

All submissions are optional but waived if not completed by the stated deadlines.

Parties who refuse to participate in the investigative process forfeit their right to participate in a hearing, including making pre-hearing submissions.

### **E. First Pre-Hearing Submission – Written Opening Statements and Witness Requests**

First, the Title IX Coordinator will provide the parties, the Hearing Chair, and Hearing Panel with copies of the final investigative record and report.

At the same time, the Title IX Coordinator will instruct the parties, in writing, that they have the opportunity to prepare a written opening statement and submit a written list of proposed witnesses.

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<sup>10</sup> Notice of the Hearing Chair may precede notice of the Hearing Panel members.



The parties will be given five (5) business days for such submissions.

Within the five (5) business days, the parties may request extensions that will be granted, if reasonable, at the discretion of the Hearing Chair. Any extension granted to one party will be granted to the other party. Delays simply to prolong the process will not be permitted.

Failure to make these submissions within the required five (5) business days or any approved extension will result in a forfeiture of the right to do so later.

### 1. Written Opening Statements

The parties may prepare a written opening statement, not to exceed 2500 words.

These statements are the parties' opportunity to tell the Hearing Panel why it should find in the party's favor.

These statements must be signed by the parties.

In presenting their side, the parties should be responsive to the investigative record and report by directly addressing and responding to specific information contained in the investigative record and report and citing specific page numbers.

The parties may want to call the Hearing Panel's attention to specific interview statements or evidentiary materials contained in the investigative record. Again, the parties should include specific page citations to the final investigative record.

The parties should not add or address information not contained in the investigative record, as new information will not be considered.

Prior to the hearing, the Title IX Coordinator will distribute each party's written statement to the other party, Hearing Chair, and Hearing Panel for their review.

### 2. Witness Requests

All interview statements contained in the final investigative record become part of the hearing record and are before the Hearing Panel. If a party wants the Hearing Panel to hear directly from a witness, the party must submit a written request within the five (5) business days.

Such a request should include:

1. The names of proposed witnesses.
2. For each proposed witness, an explanation of why the individual's presence is relevant and helpful to the Hearing Panel in determining responsibility. Put another way, the party should explain why the witness's interview statement contained in the final investigative report is not sufficient for the Hearing Panel to make its finding.
3. The parties are encouraged to include proposed questions for or general topics to be addressed by each witness. The parties will have an opportunity to supplement and revise their requests for questions and topics once they learn who will testify at the hearing. However, by indicating proposed questions and topics at this juncture, the parties will help the Hearing Chair and Hearing Panel understand why the parties would like to hear from specific individuals. The parties may request only witnesses who were interviewed by the investigator during the



investigative process. (See below for a discussion of the limited exception for newly discovered evidence.)

## **F. Second Pre-Hearing Submission – Questions and Topics**

The Hearing Chair and Hearing Panel will review the parties' witness requests. After consultation with the Hearing Panel, the Hearing Chair will rule on the parties' requests.

The Hearing Chair, in consultation with the Hearing Panel, may call witnesses not requested by the parties.

The parties will be provided with a witness list and informed in writing that they have an opportunity to propose, also in writing:

1. Questions and topics for the witnesses. The parties may:
  - a. revise and supplement any questions and topics they already submitted and
  - b. propose new questions and topics.
2. Questions for the investigator, who will answer questions about the investigative report and record.
3. Questions and topics for themselves and the other party. The parties are not required to commit to testifying at this juncture, but are encouraged to prepare for the eventuality that they and the other party would testify by submitting proposed questions and topics.

The Hearing Chair will establish a reasonable deadline for the submissions, typically no longer than five (5) business days.

Within the deadline established by the Hearing Chair, the parties may request extensions that will be granted, if reasonable, at the discretion of the Hearing Chair. Any extension granted to one party will be granted to the other party. Delays simply to prolong the process will not be permitted.

Failure to make these submissions within the required time period or any approved extension will result in a forfeiture of the right to do so later.

In exceptional circumstances, the Hearing Chair, in consultation with the Hearing Panel, may permit late requests only where the necessity for such could not have been reasonably anticipated in advance.

The Hearing Chair, in consultation with the Hearing Panel, will determine which of the parties' requested questions will be asked or topics covered.

The Hearing Chair will approve in substance all questions or topics that are relevant and that are not prohibited by these procedures or applicable laws, unduly prejudicial, or cumulative of other evidence.

At the hearing, the parties will have an opportunity to propose reasonable additional questions and topics.

The Hearing Chair and Panel will be permitted to ask their own questions.





## **G. Impact/Mitigation Statement**

The parties will be permitted, but not required, to prepare a written or recorded Impact/Mitigation Statement relevant to any sanctions. The parties may submit the statement up until the start of a hearing. The statement would be distributed to the Hearing Panel and the other party if the Hearing Panel finds the respondent responsible.

## **H. Presumption of Non-Responsibility and Standard of Proof**

The respondent will be presumed “not responsible” unless and until a Hearing Panel determines a respondent is responsible.

The Hearing Panel will determine whether the respondent is responsible by a majority vote using a preponderance of the evidence standard. This means that to find the respondent responsible for any prohibited conduct, a majority of the Hearing Panel must be satisfied, based upon the hearing record, that it is more likely than not that the respondent committed all of the elements of the alleged prohibited conduct. If the Hearing Panel does not find the respondent responsible for any prohibited conduct under Policy 6.4 or any supplemental jurisdiction, it will dismiss the case. If the Hearing Panel finds that the respondent is responsible under Policy 6.4 or supplemental jurisdiction, it will consider appropriate sanctions and remedies.

## **I. Positions of Hearing Panel and Hearing Chair**

The Hearing Panel will include faculty and staff members selected through an appropriate process established by the University.

The position of Hearing Chair will be filled through an appropriate process established by the University.

The Hearing Chair and Hearing Panel members will receive annual training as required by law.

The Hearing Chair will provide guidance to the Hearing Panels and serve as a gatekeeper by making evidentiary and procedural rulings both prior to and during the hearing.

Given this significant role, the Hearing Chair will be non voting.

## **J. Hearing Process and Format**

All hearings will be private. The only persons present will be the parties, their advisor(s) and support person, witnesses, the Hearing Panel and Hearing Chair, the investigator, and any staff necessary for the conduct of the hearing.

The parties with any advisors and support persons will be in separate, private rooms.

The parties will participate remotely via a secure audio-visual connection, with the exception that when a party testifies, they must do so in the presence of the Hearing Panel and Hearing Chair and may be accompanied by their advisor(s) and support person.

Witnesses may be present only for their own testimony.





The Hearing Chair, in consultation with the Hearing Panel, may establish reasonable time limits, rules, and format, providing the parties with equal opportunities to participate.

Formal rules of evidence will not apply.

Evidence that was excluded or redacted from the investigative record as impermissible under these procedures or applicable law will not be admissible at the hearing, with some exceptions at the sanctions stage.

Typically, the format of the hearing will be as follows:

- Introduction by the Hearing Chair. The Hearing Chair will explain the hearing process, address any necessary procedural issues, and answer questions.
- Testimony by the investigator. The investigator will answer questions about the investigative report and record.
- Testimony by the complainant.
- Testimony by the respondent.
- Testimony by any witnesses.
- Closing statements by the complainant followed by the respondent.

#### 1. Testimony

Testimony is conducted through a question-and-answer format.

The Hearing Panel will conduct all questioning.

The Hearing Chair will ask persons being questioned to affirm that they will testify truthfully.

Both the complainant and the respondent may testify or decline to testify and to make their election when their turn to testify arises.

In addition to the pre-approved questions and topics, at the hearing, the parties will have an opportunity to propose reasonable additional questions.

At the conclusion of testimony by any individual, there will be a brief adjournment so that the parties may propose supplemental and follow-up questions, which may be approved at the discretion of the Hearing Chair, in consultation with the Hearing Panel. A party who testifies will be given full opportunity to propose supplemental questions that they wish to answer.

The Hearing Chair, in consultation with the Hearing Panel, reserves the right to call a witness not on the witness list but previously interviewed by the investigator. In such case, the parties will be given time to propose questions for the witness.

If a party proposes a witness not requested prior to the hearing, but interviewed by the investigator, the Hearing Chair, in consultation with the Hearing Panel, may grant the request where the necessity for such could not have been reasonably anticipated in advance.

If a party seeks to present a witness or introduce evidence not requested prior to the hearing and not disclosed to the investigator, the Hearing Chair, in consultation with the Hearing Panel, may grant such request upon a showing that the witness/evidence was newly discovered and could not have been discovered during the investigation with due diligence.



Where a newly discovered witness or evidence is introduced, to prevent surprise to the other party, the Hearing Chair will adjourn the hearing for the investigator to investigate the newly discovered witness or evidence.

The Hearing Chair will also re-open the pre-hearing submission process so that the parties may respond to the new information.

## **2. Closing Statements**

The parties may provide both oral and written closing statements.

This is the opportunity for the parties to marshal the evidence in the hearing record and suggest inferences and conclusions. The parties may comment only upon information already in the hearing record, as new information will not be considered.

The Hearing Chair will establish a time limit for brief oral closing statements, typically around five (5) minutes.

The Hearing Chair will also set the schedule for submission of written closing statements. The parties should assume that deliberations will commence immediately following the hearing, in which case the parties will be expected to submit written closing statements shortly after the oral closing statements. If there is an adjournment for deliberations, the Hearing Chair may provide the parties with limited additional time to submit their statements.

Each party's written statement will be limited to 2000 words and to the evidence contained in the investigative record and hearing. The written statements will be distributed to the other party, Hearing Chair, and Hearing Panel for their review.

These statements must be signed by the parties.

## **K. Deliberations on Findings of Responsibility**

After closing arguments, the Hearing Panel may begin its deliberations. If time permits, it is expected that the Hearing Panel will commence its deliberations immediately after closing arguments.

Deliberations will be in private and they will not be audio-recorded.

The Hearing Chair may participate in deliberations but may not vote.

The Hearing Panel will make its decision based upon a majority vote.

Deliberations will be completed as expeditiously as possible.

## **L. Deliberations on Sanctions and Remedies**

A Hearing Panel that finds a respondent responsible will continue its deliberations to consider sanctions and remedies.

It will issue its findings on responsibility and sanctions/remedies simultaneously.



Prior to deliberating on sanctions and remedies, the Hearing Chair will distribute to the Hearing Panel and both parties any written or recorded Impact/Mitigation Statement previously submitted by the parties, subject to any redactions required by law.

If the respondent has a Cornell disciplinary record, a known disciplinary record from another institution, or a known criminal conviction, prior to deliberating on sanctions and remedies, the Hearing Chair will also distribute to the Hearing Panel a copy of such disciplinary and/or criminal records. (Where an educational record, including a Cornell disciplinary record, is being considered solely for sanctions, it will not be shared with the complainant.)

Deliberations will be in private and they will not be audio-recorded.

Deliberations will be completed as expeditiously as possible.

The Hearing Chair may participate in deliberations but may not vote.

The Hearing Panel will determine sanctions and remedies by a majority vote.

In determining sanctions and remedies, the Hearing Panel will consider:

- the severity of the prohibited conduct;
- the circumstances of the prohibited conduct;
- the impact on the complainant;
- the impact on the community;
- the impact on the respondent;
- prior misconduct by the respondent, including the respondent's previous school disciplinary record, both at Cornell University and elsewhere, and any criminal convictions;
- the goals of Policy 6.4 and these procedures; and
- any other mitigating, aggravating, or compelling factors.

The Hearing Panel may impose one or more of the following sanctions and remedies:

- Measures similar in kind to the Interim Measures specified under these procedures.
- Appropriate educational steps (such as alcohol or drug education, reflection papers, counseling, or directed study).
- Restrictions or loss of specified privileges at the University for a specified period of time.
- Oral warnings.
- Written reprimands.
- Disciplinary probation for a stated period.
- Suspension from the University for a stated period not to exceed five (5) years, or indefinitely with the right to petition the Hearing Panel in writing at any time for readmission after the academic term following the academic term in which the suspension occurred.
  - Such petition will be submitted to the Title IX Coordinator no later than April 1 if the petition is for readmission for the fall semester and by November 1 if the petition is for readmission for the spring semester.
  - If the Title IX Coordinator agrees with the respondent's petition, after consulting with appropriate professional colleagues and receiving approval of the Hearing Chair, the Title IX Coordinator may permit the readmission without the petition being considered by the Hearing Panel.



- If the Hearing Panel denies the petition, the respondent may not petition again until the next semester and, in any event, may not petition for readmission for the same semester denied by the Hearing Panel.
- While on such suspension, the student may not obtain academic credit at Cornell or elsewhere toward the completion of a Cornell degree.
- Dismissal (i.e., expulsion) from the University.

The Hearing Panel may also recommend to the Title IX Coordinator that the University take measures on campus to remedy the effect or prevent the reoccurrence of such prohibited conduct.

Sanctions and remedies will be effective immediately unless otherwise specified by the Hearing Panel.

## **M. Academic Transcript Notations and Withholding of Degrees**

Pursuant to University policy for all student disciplinary matters, the following actions will result in a permanent transcript notation for a student:

- dismissal (i.e., expulsion),
- suspension,
- withdrawal after a finding of responsibility, and
- withdrawal while a matter is pending.

A finding of responsibility includes a finding made by a Hearing Panel, a formal admission of responsibility by the respondent to prohibited conduct, and an acknowledgement by the respondent, pursuant to an Alternate Resolution agreement, of sufficient evidence to support a finding of responsibility.

If the underlying finding of responsibility is vacated for any reason, the transcript notation will be removed.

The University may withhold awarding a degree otherwise earned until the adjudication process set forth in these procedures is complete, including the satisfaction of any sanctions imposed.

## **N. Hearing Panel Decision**

The Hearing Panel will issue a written decision as expeditiously as possible upon completion of deliberations. The Title IX Coordinator will provide the written decision to the parties simultaneously and as soon as practicable.

The decision will include:

- The specific prohibited conduct for which the respondent was found responsible and not responsible,
- the findings of fact and the rationale for the Hearing Panel's determinations regarding both responsibility and sanctions, and
- any dissenting opinion.

The decision may incorporate and reference any portions of the proceedings, including the investigative record and report, as the Hearing Panel deems appropriate.

The decision will include instructions and time limits for appeals.



Both the complainant and the respondent will be informed simultaneously of any sanctions and remedies, the date by which the requirements must be satisfied (if applicable), and the consequences of failure to satisfy the requirements.

The imposition of sanctions will take effect immediately.

## **O. Hearing Record**

An audio recording will be made of all hearings, but not of deliberations.

In the event of any failure rendering the audio recording of the hearing inaudible in whole or in part, the record will be recreated as necessary, whether in its entirety or for any inaudible portions, with input from the parties, any witnesses whose testimony is at issue, the Hearing Panel, and Hearing Chair. Such failure will not constitute grounds for appeal.

Individuals appearing before the Hearing Panel, whether as a party or witness, are prohibited from recording any portion of the hearing.

Hearing Panel members are also prohibited from recording any portion of the hearing. Immediately following the hearing, Hearing Panel members will destroy any notes they took during the hearing.

The hearing record will include: the audio recording of the hearing, the Hearing Panel's decision, the final investigative record and report, the parties' pre-hearing submissions, the written witness list, written opening and closing statements, and the parties' Impact/Mitigation Statements.

## **XXII. APPEAL OF A HEARING PANEL DECISION**

Both the complainant and the respondent may appeal a decision of the Hearing Panel.

All appeals will be heard by a three (3) member Appeal Panel that includes the Provost and the Vice President for Student and Campus Life as two permanent *ex officio* members and a member of the Hearing Panel pool as the third member.

The member of the Hearing Panel selected to serve on any one Appeal Panel will be selected in the same manner as the members of a Hearing Panel are selected to serve on any one Hearing Panel. However, no person who served on the Hearing Panel will sit on the Appeal Panel in the same case.

All appeals will be based solely upon the hearing record.

The parties may listen to the audio recording of the hearing during business hours at a secure and private campus location, with access facilitated by the Title IX Coordinator. Appeals may be brought only upon one or more of the following grounds:

1. The sanctions or remedies are not commensurate with the injury/violation or are unjust.
2. The Hearing Panel or investigator violated the fair application of relevant University procedures and such violation may have had a prejudicial effect upon the outcome.
3. The Hearing Panel or investigator committed a prejudicial error in interpreting Policy 6.4, these procedures, and/or, in the case of supplemental jurisdiction, the Campus Code of Conduct.
4. The Hearing Panel rendered a decision that is clearly erroneous.



5. New evidence was discovered after the decision that could not have readily been discovered before the decision, which would probably change the outcome.

The appealing party commences an appeal by submitting a written statement to the Title IX Coordinator within ten (10) business days of service of the Hearing Panel's decision.

The appeal statement must set forth:

- the determination(s) being appealed,
- the specific ground(s) for the appeal, and
- the facts supporting the grounds.

The appeal statement will be limited to 3500 words.

Failure to submit an appeal within the ten (10) business days or any approved extension constitutes waiver of the right to appeal.

Within the ten (10) business days, the appealing party may request an extension of time by submitting a request to the Title IX Coordinator explaining the reason(s) for the request. The Appeal Panel will have discretion to grant such a request upon a finding of good cause for the delay.

A copy of the appeal statement will be provided to the other party, who, within ten (10) business days may submit a written response to the Title IX Coordinator. The response should address both the specific ground(s) for appeal set forth in the appealing party's statement and the specific facts asserted by the appealing party. The response will be limited to 2500 words.

The Appeal Panel will establish a reasonable schedule for issuing a written decision, typically no later than thirty (30) business days after receipt of the non-appealing party's submission or the time for submission has expired.

The decision will be final and binding on all parties.

Any decision will be based solely upon the hearing record and, in appropriate cases, upon a showing of new evidence relevant to the ground for appeal.

The decision must be by a majority vote of the Appeal Panel and will include the rationale for the Appeal Panel's decision and any dissenting opinion.

Findings of fact will not be set aside unless clearly erroneous.

Harmless error will be ignored.

The Appeal Panel may affirm the decision of the Hearing Panel or sustain any of the above-specified grounds for appeal, in which case the Appeal Panel may:

- reverse a finding;
- change a sanction or remedy;
- remand a case to the original Hearing Panel if possible for a new hearing or remand a case to a newly composed Hearing Panel if there were procedural violations; or
- remand a case to the original investigator if possible for a new investigation or remand a case to a new investigator if there were procedural violations in the investigation.



If the Appeal Panel calls for new evidence, if possible, it will remand the case to the Hearing Panel from which it originated for a new hearing.

Upon remand from the Appeal Panel, as necessary and possible, a Hearing Panel may remand a case to the investigator from which it originated for further investigation.

### **XXIII. REQUEST FOR A STAY PENDING APPEAL**

The Appeal Panel has discretion to stay any sanctions pending a final decision on the appeal.

It may but is not required to stay a sanction where the appealing party demonstrates the need for a stay by a clear showing.

An application for a stay must be submitted to the Title IX Coordinator. The Title IX Coordinator will provide a copy of the stay application to the Appeal Panel and the other party, who is entitled to respond to the stay application by submitting to the Title IX Coordinator a written response.

The Appeal Panel will set a reasonable timeline for handling the stay application, including a deadline for the other party to respond to the stay application.

The Appeal Panel has discretion to reconsider its decision on a stay at any time during the appeal.

The stay expires at the conclusion of the appeal.

### **XXIV. RESTORING RESPONDENT'S REPUTATION UPON A DISMISSAL OF A FORMAL COMPLAINT**

Upon completion of all proceedings, including any appeals, if a Formal Complaint has been dismissed, where appropriate, the Title IX Coordinator will attempt to restore the reputation of the respondent. To the extent permissible by law and University policy, the Title IX Coordinator may take such steps as deleting records and, unless the respondent prefers otherwise, notifying persons who participated in the proceedings of the dismissal and/or making a public announcement of the outcome.

