

# Teachers College Title IX Policy and Procedures

## POLICY STATEMENT

Teachers College, Columbia University (“TC” or the “College”) is committed to providing a working, learning and living environment free from sexual discrimination and harassment and to fostering a vibrant, nurturing community founded upon the fundamental dignity and worth of all of its members.

In furtherance of this commitment, and in accordance with Title IX of the Education Amendments of 1972 (“Title IX”), and the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the “Clery Act”), as amended by the Violence Against Women Act (“VAWA”), the College prohibits the forms of sexual or related conduct as defined below.

Title IX of the Educational Amendments Act of 1972 (“Title IX”) is the federal law that prohibits sex discrimination by any educational institution that receives federal funding. This law has been interpreted by courts and the U.S. Department of Education to require colleges and universities to take certain steps to prevent and respond to sexual harassment.

In May 2020, the U.S. Department of Education issued new regulations for colleges and universities that address sexual harassment. Specifically, the U.S. Department of Education new set of regulations under Title IX:

- Define the meaning of “sexual harassment” (including forms of sex-based violence) and limits Title IX’s coverage to incidents involving misconduct that is “severe, pervasive and objectively offensive,”
- Address how institutions of higher education that receive federal funding (including Teachers College) **must** respond to reports of behaviors falling within that definition of sexual harassment, and
- Set out a detailed grievance process that institutions of higher education (including Teachers College) **must** follow when investigating, adjudicating and imposing sanctions in cases involving sexual harassment under that definition.

To comply with these regulations, the College has adopted this Title IX Policy and Procedures to address the types of misconduct alleged against employees. These new regulations do not cover all of the types of prohibited conduct or places in which sexual misconduct occurs that Teachers College believes must be addressed in keeping with our own commitment to non-discrimination and our obligations under state and local law. Teachers College also maintains the “Policy and Procedures on Discrimination and Harassment” for other types of discrimination, harassment and gender-based misconduct by employees that are not covered by the new regulations. Both policies are important to creating and supporting a College community that rejects all forms of discrimination, harassment and gender-based misconduct. In addition, Columbia University, Teachers College and Barnard College maintain the “Gender Based Misconduct Policy and Procedures for Students” for other types of gender-based misconduct by students that are not covered by the new regulations.

Under both the Title IX Policy and Procedures and the Policy and Procedures on Discrimination and Harassment, the College remains committed to diligently investigating reports of prohibited conduct, supporting students and employees who experience discrimination, harassment or gender-based misconduct, and responding fairly and firmly when employee members of the College community violate College policy.

### **EFFECTIVE DATE**

The Title IX Policy and Procedures are effective on August 14, 2020, and will only apply to sexual harassment alleged to have occurred on or after August 14, 2020. Incidents of sexual harassment alleged to have occurred before August 14, 2020, will be investigated and adjudicated according to the process in place at the time the incident allegedly occurred.<sup>1</sup>

### **SCOPE OF POLICY AND PROCEDURES<sup>2</sup>**

This Policy governs the conduct of College employees that occurs within any College education program or activity within the United States in locations, events or circumstances over which TC has exercised substantial control over both the Respondent and the context in which the Title IX behavior occurs.

The Procedures set forth describe the general response, investigation, disciplinary, sanctioning and appeal processes that apply when a person accused of sexual harassment (referred to as the “Respondent”) is a current Teachers College employee.

### **POLICY**

All members of the College community are expected to adhere to this Policy and to cooperate with the Procedures it describes.

This Policy includes the following guidance:

- Federal law definition of sexual harassment
- Reporting obligations and options
- Procedures

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<sup>1</sup> According to the Department of Education Office for Civil Rights Blog Post of August 5, 2020, “the Rule does not apply to schools’ responses to sexual harassment that allegedly occurred prior to August 14, 2020. The Department will only enforce the Rule as to sexual harassment that allegedly occurred on or after August 14, 2020. With respect to sexual harassment that allegedly occurred prior to August 14, 2020, OCR will judge the school’s Title IX compliance against the Title IX statute and the Title IX regulations in place at the time that the alleged sexual harassment occurred. In other words, the Rule governs how schools must respond to sexual harassment that allegedly occurs on or after August 14, 2020.”

<sup>2</sup> This policy and related procedures only pertain to the Federal Title IX Regulated Policy and Procedures. Other behaviors and conduct may be covered under other Teachers College policies including the TC Policy and Procedures on Discrimination and Harassment.

## **DEFINITION OF PROHIBITED CONDUCT**

### **Sexual Harassment**

Sexual Harassment is defined by Federal Title IX as misconduct on the basis of sex that satisfies one or more of the following conditions:

- An employee conditioning educational benefits on participation in unwelcome sexual conduct (i.e., quid pro quo);
- Unwelcome sexual conduct that a reasonable person would determine is so severe, pervasive and objectively offensive that it effectively denies a person equal access to the College's education programs or activities;
- Sexual Assault (as defined in the Clery Act); which includes any sexual act directed against another person, without consent of the victim including instances where the victim is incapable of giving consent;
- Dating Violence (as defined in the VAWA amendments to the Clery Act), which includes any violence committed by a person: (a) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (b) where the existence of such a relationship will be determined based on a consideration of the following factors: (i) The length of the relationship; (ii) The type of relationship; (iii) The frequency of interaction between the persons involved in the relationship;
- Domestic Violence (as defined in the VAWA amendments to the Clery Act), which includes any felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under New York States domestic or family violence laws or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of New York State;
- Stalking (as defined in the VAWA amendments to the Clery Act), meaning 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.

## **IMPORTANT POLICY-RELATED CONCEPTS**

### **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 clearly communicate willingness to engage in the sexual activity. It is important not to make assumptions about consent. If there is confusion or ambiguity, participants need to stop sexual activity and communicate about each person's willingness to continue.
- Consent cannot be procured by the use of physical force, compulsion, threats, intimidating behavior, or coercion.
- Consent cannot be obtained from, or given by, a person who is incapacitated.

- Consent to one form of sexual activity does not imply consent to other forms of sexual activity.
- Consent to engage in sexual conduct with one person does not imply consent to engage in sexual conduct with another person.
- Silence or the lack of resistance, in and of itself, does not demonstrate consent. Again, it is important not to make assumptions; if confusion or ambiguity arises during a sexual interaction, it is essential that each participant stops and clarifies the other's willingness to continue engaging in the sexual conduct.
- Consent can be withdrawn at any time, including after it is initially given. When consent is withdrawn or can no longer be given, sexual activity must stop.
- Previous relationships or previous consent for sexual activity is not consent to sexual activity at another time. However, established patterns of consent in a specific relationship may be considered when evaluating whether affirmative consent was given on a particular occasion.
- Accepting a meal, a gift, or an invitation to socialize, including on dating apps, does not imply or constitute consent to sexual activity.
- The definition of consent does not vary based on a participant's sex, sexual orientation, gender identity, gender expression or relationship status.

**Education Program or Activity** includes:

- Any on-campus premises.
- Any off-campus premises, events or circumstances over which Teachers College exercises substantial control over both the Respondent and the context in which the sexual harassment occurs. This includes buildings or property owned or controlled by a recognized student organization.
- Activity occurring within computer and internet networks, digital platforms and computer hardware or software owned or operated by, or used in the operations of Teachers College's programs and activities over which Teachers College has substantial control.

**Formal Complaint**

A document (including an electronic submission) (a) filed by a Complainant with a signature or other indication that the Complainant is the person filing the formal complaint, or (b) is signed by the Title IX Coordinator, alleging sexual harassment against a Respondent about conduct within a Teachers College education program or activity and requesting initiation of the procedures consistent with the Title IX Policy and Procedures to investigate the allegation of sexual harassment. Complainants are only able to file a Formal Complaint under this Policy if they are currently participating in, or attempting to participate in, the education programs or activities of the College, including as an employee.

**Complainant**

Any individual who has reported being or is alleged to have experienced conduct that could constitute covered sexual harassment as defined under this Policy.

## **Relevance**

The basic test for relevance is whether the evidence presented and/or hearing question posed tends to make an allegation of sexual harassment more or less likely to be true. The following type of evidence and questions are not relevant:

- Evidence and questions about the Complainant's sexual predisposition or prior sexual behavior **unless**:
  - they are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or
  - they concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.
- Evidence and questions that constitute or seek disclosure of, information protected under a legally-recognized privilege.
- Any party's medical, psychological and similar records unless the party has given voluntary, written consent.

## **Respondent**

Any individual who is reported to be the perpetrator of conduct that could constitute covered sexual harassment as defined under this policy.

## **Confidentiality versus Privacy**

References made to *confidentiality* refer to the ability of identified confidential resources to not report crimes and violations to law enforcement or College officials without permission, except for exigent circumstances, such as a health and/or safety emergency or child abuse. References made to *privacy* mean Teachers College offices and employees who cannot guarantee confidentiality but will maintain privacy to the greatest extent possible, and information disclosed will be relayed only as necessary to investigate and/or seek a resolution and to notify the Title IX Coordinator or designee, who is responsible for tracking patterns and spotting systemic issues. Teachers College will limit the disclosure as much as practicable, even if the Title IX Coordinator determines that the request for confidentiality cannot be honored.

## **Retaliation**

The College or other person may not intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX because the individual made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing.

Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX constitutes retaliation.

## **DISABILITY ACCOMMODATIONS**

This Policy does not alter any institutional obligations under federal disability laws including the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Parties may request reasonable accommodations for disclosed disabilities to the Title IX Coordinator at any point before or during the Title IX Process that do not fundamentally alter the Process. The Title IX Coordinator will affirmatively provide disability accommodations that the Parties request.

## **PROCEDURES**

### **Reporting Sexual Harassment**

Teachers College provides a range of options for those who believe they have experienced sexual harassment and individuals are encouraged to bring their concerns to the College's attention immediately. The College takes allegations of sexual harassment very seriously, and will actively respond to alleged sexual harassment and will take remedial action, where appropriate.

The College does not limit the time for submitting a complaint of sexual harassment, but strongly urges the immediate reporting of complaints or concerns. Early reporting and intervention have proven to be the most effective method of resolving actual or perceived incidents of sexual harassment. The College's ability to investigate and respond effectively may be reduced with the passage of time.

Sexual harassment should be reported immediately to the TC Title IX Coordinator, Janice S. Robinson:

- Via report form
- By phone at (212) 678-3391
- By email at [jrobinson@tc.columbia.edu](mailto:jrobinson@tc.columbia.edu)
- By mail to 525 West 120<sup>th</sup> Street, 128 Zankel Hall Box 220, New York NY 10027
- By hand delivery 128 Zankel Hall

The Title IX Coordinator will designate the report to ODCA Title IX Staff to begin the grievance process. If the particular circumstances make a discussion with, or a report to, ODCA Title IX Staff inappropriate (for instance, the complaint involves an ODCA employee), incidents may be reported to Human Resources or the Complainant's supervisor. The College takes allegations of sexual harassment very seriously and will take appropriate action.

Reports made to the Title IX Coordinator should include all of the information known to the Complainant or reporter including, but not limited to, the following:

- the identity and status of the Complainant and the Respondent (e.g., employee, student);
- details concerning the incident(s) or conduct that gave rise to the report;
- date(s) of, and location(s) of the incident(s);
- the identity and status of any witness(es) to the incident(s) with telephone numbers, e-mail addresses, and street addresses if known.

Reports may be submitted anonymously, by witnesses, or by others who are made aware of the incident. However, anonymous reports may limit the College's ability to investigate and respond.

Reports of sexual harassment do not automatically initiate a formal investigation. ODCA Title IX Staff will attempt to gather additional information from relevant individuals and assess such information in order to determine next steps.

### **Intake**

Any individual, whether affiliated with the College or not, may allege violations of the Policy. Upon receipt of an allegation of sexual harassment to ODCA Title IX Staff or the Title IX Coordinator, the College will make prompt efforts to speak with the Complainant. ODCA Title IX Staff will inform the Complainant of the availability of supportive measures (with or without the filing of a formal complaint), as described below and will explain the process for filing a formal complaint.

### **Supportive and Interim Measures**

The College will work with individuals affected by sexual harassment to ensure their safety and promote their well-being. In addition to providing preliminary information regarding the Title IX process, ODCA Title IX Staff will discuss the availability of supportive measures with both parties. Supportive measures are designed to ensure that both parties maintain equal access to College employment and educational programs and activities, without unreasonably burdening the other party. The measures are designed to protect the safety of all parties and the College environment, including the deterrence of violations of this Policy. For example, supportive measures may include extensions of deadlines or other course-related adjustments, modifications of work or class schedules, no contact directives, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence or administrative leave, increased security and monitoring of certain areas of the campus, and other similar measures.

In determining whether supportive measures are appropriate, ODCA Title IX Staff will consider the Complainant's wishes, as well as the burden to the parties. Where supportive measures are deemed appropriate, they will be non-disciplinary, non-punitive, and provided without fee or charge to the parties. Supportive measures may be provided to either party at any phase in the process, regardless of whether a formal complaint has been filed. Supportive measures will be kept confidential to the extent possible.

The College may also impose interim measures, based on the totality of facts known at the time, to ensure the safety of all parties involved, to prevent the escalation of conflict, and to protect the integrity of the disciplinary process while the process is ongoing. If, after taking an individualized safety and risk analysis, the College determines there is an immediate threat to the physical health or safety of any individual arising from the sexual harassment allegations, the College may consider removing a Respondent from educational programs or activities on an emergency basis. Where removal is deemed appropriate, the Respondent will receive prompt notice and have an opportunity to challenge the decision by appealing to the Title IX Coordinator. The appeal must be in writing and may be no longer than five double-spaced,

typewritten pages. The appeal must be delivered to Title IX Coordinator within three (3) business days of notice of the removal decision (via email, mail or hand delivery). Failure to meet the deadline for appeal will result in waiver of the right to appeal.

The imposition of supportive and interim measures does not indicate that the College has made a final decision about the report of prohibited conduct.

The College will provide notice about these supportive and interim measures only to those who need to know in order to make them effective.

Failure to comply with supportive and/or interim measures or other directives is a violation of College Policy and may lead to additional disciplinary action.

### **Filing a Formal Complaint**

In order to initiate a formal complaint, the Complainant must submit a **written document**, physical or digital, alleging sexual harassment against a Respondent and requesting the College to investigate the allegations. The formal complaint must contain the Complainant's physical or digital signature, or otherwise indicate that the Complainant is the person filing the formal complaint, and the document should be submitted to the TC Title IX Coordinator or ODCA Title IX Staff.

The complaint must include the following information:

- the identity and status of the Complainant and Respondent(s);
- details concerning the incident(s) or conduct that gave rise to the complaint;
- date(s) of the incident;
- location(s) of the incident(s);
- the identity and status of any witness(es) to the incident(s) with telephone numbers, e-mail addresses, and street addresses if known.

In certain instances, if a complainant does not wish to make a Formal Complaint, the TC Title IX Coordinator may determine a Formal Complaint is necessary, and will file such a formal complaint and inform the Complainant. In such instances, the Title IX Coordinator is not a party to the matter, and, if known, the identities of the parties will be made known in any subsequent notice of allegations to the Respondent.

### **Initial Assessment of Formal Complaint**

Once received, ODCA Title IX Staff will assess whether the allegations, as put forth, implicate this Title IX Policy and Procedures or some other form of alleged misconduct. In the latter case, ODCA Title IX Staff will assess the matter under a separate TC policy, which may be the TC Policy and Procedures on Discrimination and Harassment. ODCA Title IX Staff will also assess the formal complaint for other jurisdictional issues.

ODCA Title IX Staff **must** dismiss a formal complaint under the following circumstances:

- the alleged matter does not meet the Title IX definition of sexual harassment as described above;



- the alleged matter does not arise from a College education program or activity;
- the alleged matter is not raised against a person in the United States;
- the alleged matter occurred before August 14, 2020.

ODCA Title IX Staff **may** dismiss a formal complaint under the following circumstances:

- the Complainant submits a written request to withdraw the complaint;
- the Respondent is no longer at the College

If a complaint is dismissed, it may qualify for review under a separate, applicable College policy. Parties will simultaneously be provided with a written notice containing the reason(s) for dismissal and that dismissals may be appealed.

### **Appealing Dismissal of Formal Complaint**

Appeals pertaining to the dismissal of a formal complaint must be submitted to the Title IX Coordinator within three (3) business days from receipt of the dismissal. The appeal must meet one or more of the following criteria:

- **Procedural Irregularity:** An appeal based on procedural irregularity must identify with specificity each alleged irregularity within the consideration of the complaint and the ways in which the specified irregularity(s) affected the decision to dismiss the complaint; or
- **New Evidence:** An appeal based on new evidence must explain why this information was not reasonably available at the time the decision to dismiss the formal complaint was made and how this information could affect the decision to dismiss the complaint. Information not provided because a party declined to participate or withdrew from the process cannot be considered new information for the purpose of appeal. This includes situations where a party declines to participate on the advice of their advisor; and/or
- **Conflict of Interest/Bias:** An appeal based on conflict of interest or bias must explain how ODCA Title IX Staff or the TC Title IX Coordinator had a conflict of interest or bias for or against complainants or respondents generally, or the individual Complainant or Respondent that affected the decision to dismiss the complaint.

Upon receipt of an appeal from one of the parties, the Title IX Coordinator will inform the other party and provide a copy of the appeal. The non-appealing party will have three (3) business days from receipt of the appeal to respond should the party wish to do so. If both the Complainant and the Respondent appeal, the appeals will be considered concurrently and each party will have the opportunity to review and respond to the other party's appeal.

The Title IX Coordinator will review the appeal and non-appealing party's response (if provided). Within three (3) business days (of the non-appealing party's response or the appeal if no response is provided), the Title IX Coordinator will communicate, in writing, the determination regarding the appeal simultaneously to both parties. The Title IX Coordinator may take the following actions:

- Uphold the decision to dismiss the complaint. In such cases, the complaint may be considered for investigation under a separate, applicable TC policy; or
- Reverse the decision to dismiss the complaint. If the Title IX Coordinator reverses the decision to dismiss, the complaint will be investigated as outlined in the Formal Investigation Process section in this Policy.

The determination of the Title IX Coordinator is final. Failure to meet the deadline for appeal will result in waiver of the right to appeal.

### **FORMAL INVESTIGATION PROCESS**

Upon the filing a formal complaint that sufficiently implicates this Policy and which is not otherwise subject to dismissal, ODCA Title IX Staff will initiate a formal investigation pursuant to the procedures laid out in this Policy.

#### **Notice of Allegations**

Upon receipt of a formal complaint, the College must provide written notice to the parties, who are known, which includes sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known (including the Complainant), the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident, if known. A party may not proceed anonymously in connection with a formal investigation. The notice must include reasonably prompt time frames for the investigation and a process that allows for any temporary delay of the investigation or the limited extension of time frames for good cause with written notice to the Complainant and the Respondent of the delay or extension and the reasons for the action.

The notice must include a statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding a violation of the Policy is made at the conclusion of the grievance process. The notice must inform the parties that they may have an advisor of their choice, who may be, but is not required to be an attorney. The notice must include a statement that before the conclusion of the investigation, the parties may inspect and review evidence that is directly related to the allegations, including evidence upon which TC does not intend to rely in reaching a determination regarding responsibility, and evidence that both tends to prove or disprove the allegations whether obtained from a party or other source. The notice must inform the parties of any provision in the College's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the investigation. If, in the course of the investigation, ODCA Title IX Staff decide to investigate allegations about the Complainant or Respondent that are not included in the notice initially provided, ODCA Title IX Staff must provide notice of the additional allegations to the parties whose identities are known.

ODCA Title IX Staff must also provide written notice to any parties whose participation is invited or expected (i.e. witnesses) of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings with sufficient time for the party to prepare to participate.

### *Advisors*

Complainants and Respondents may be accompanied by an advisor of their choice (which may be an attorney, but does not need to be so) to any meeting or proceeding related to any incident of sexual harassment. Advisors may provide support and advice about the investigation, hearing and disciplinary processes.

Complainants and Respondents may choose not to have an advisor during the investigative process. However, Complainants and Respondents **must** have an advisor during the live hearing process so that the hearing advisor (“Hearing Advisor”) can pose questions to the opposing party and witnesses. Complainants and Respondents may not direct questions at each other or the witnesses during the hearing process. Where a Complainant or Respondent does not have a Hearing Advisor, the College will provide one at no cost to the Complainant or Respondent. The Hearing Advisor provided by the College may or may not be an attorney.

The following outlines the ways in which advisors may or may not participate throughout the investigative and hearing processes.

### *Investigative Meetings*

An advisor **may**:

- Talk quietly with the advisee or pass notes in a non-disruptive manner.
- Take a break, at the advisee’s request, to speak privately with the advisee.
- Review information provided to the advisee by the investigators.

An advisor **may not**:

- Speak on behalf of the advisee.
- Pose questions to the investigators.
- Answer questions posed to the advisee.
- Make requests (outside of scheduling and accommodations).
- Provide information to the investigators.
- Address the investigators.
- Be disruptive (for example, badgering a witness or party; not following decision-maker instructions or protocol; speaking out of turn).

### *Hearings*

A Hearing Advisor **may**:

- Talk quietly with the advisee or pass notes in a non-disruptive manner, except during cross-examination of the advisee.
- Review the information provided to the advisee.
- Ask questions of participants in the hearing, including the other party and witnesses.
- Assist the advisee with preparing opening and/or closing statements to the Decision-maker.

A Hearing Advisor **may not**:

- Speak on behalf of the advisee.
- Answer questions posed to the advisee.
- Be disruptive.
- Intervene in the hearing (for example, interrupting during questioning or any process during the live hearing).
- Address the Decision-maker.

## **INVESTIGATIVE TEAM**

The TC Title IX Coordinator is the College's designated officer for conducting or overseeing investigations of alleged violations of this Policy. The TC Title IX Coordinator will designate a team of investigators (the "Investigative Team"), who will tailor an investigation based on the facts, nature, and complexity of the allegations and surrounding circumstances. All investigators will have extensive training in investigating and evaluating conduct prohibited under the Policy. The Investigative Team will be impartial and unbiased. The Title IX Coordinator may, in their sole discretion, assign the investigation to appropriate non-Title IX investigator(s) or outside investigator(s). Should a party perceive a potential conflict of interest or bias related to the member(s) of the Investigative Team, the party is expected to promptly raise such conflict in writing to the TC Title IX Coordinator as soon as practicable to allow for appropriate redress.

## **Fact Gathering**

The Investigative Team will gather relevant information from all sources determined necessary for fair resolution of a formal complaint, including interviewing the Complainant, the Respondent, and any other persons with relevant information about the alleged incident(s). The Investigative Team may also review personnel records, documents, and other materials that could prove relevant to the investigation.

The Investigative Team will speak to each party in detail about the allegation(s) and ask each party to identify potential witnesses and/or other evidence to be considered. The parties will have equal opportunity to present fact and expert witnesses and other inculpatory and exculpatory evidence through the course of the investigative process. However, the parties must articulate a reasonable basis to the Investigative Team regarding why their proposed witnesses and/or other suggested evidence are relevant (i.e. will demonstrate that facts material to the allegations under investigation are more or less likely to be true) before the Investigative Team will consider such proposals. Only relevant information will be considered by the Investigative Team, and the Investigative Team retains sole discretion in determining whether the proffered witnesses and/or other evidence are relevant to the allegation(s). The Investigative Team will objectively evaluate all relevant evidence gathered through the course of the investigation.

The parties are expected to submit such evidence and respond to the Investigative Team's evidentiary requests in a timely fashion. Any documents submitted to the Investigative Team for consideration may be referenced in the Investigative Report and, as discussed below, will be shared with both parties and the parties' advisors, if applicable. The Investigative Team will work with parties and witnesses to receive evidence from the parties and witnesses. The Investigative Team may wish to question a party regarding certain evidence gathered; in that circumstance, the Investigative Team may share certain evidence with a party in advance of a scheduled meeting to provide a fair opportunity to respond to questions presented during the meeting.

The Investigative Team will inform the parties in writing when the fact-gathering stage of the investigation has concluded. No additional witnesses will be interviewed, and no additional evidence may be submitted to the Investigative Team at that time. Both parties will have equal opportunity to inspect and review all evidence (inculpatory and exculpatory) that was gathered

from any source that is directly related to the allegations. Prior to the completion of the investigative report, the Investigative Team will provide each party and the party's advisor, if applicable, the evidence subject to this review in an electronic format. The parties will have ten (10) business days to submit to the Investigative Team a written response to this evidence. Any written response will be considered by the Investigative Team prior to completion of the investigative report.

The Complainant, the Respondent, advisors, and all witnesses may not record any meeting conducted as part of the investigative process, nor copy, photograph, nor improperly disseminate any documents or evidence to which they are afforded access as part of the investigative process.

### **Evidentiary Rules**

In conducting the investigation and drafting the investigative report, the Investigative Team will follow the protocols set forth below:

*Preserving Evidence.* The Investigative Team will direct the Complainant, Respondent, witnesses, and other interested individuals to preserve any relevant evidence, which may include phone logs, text messages, electronic communications or other evidence relating to the complaint.

*Character Witnesses.* The Investigative Team will not interview witnesses whose sole purpose is to provide character information.

*Romantic or Sexual History in Sexual Assault Cases.* The Investigative Team will not consider information concerning the romantic or sexual history of either the Complainant or the Respondent, except from either the Complainant or Respondent regarding their shared sexual history. If either offers such information, the other will have the right to respond.

[Without exception, all questions and evidence regarding the Complainant's sexual predisposition are deemed irrelevant and prohibited from consideration. Questions and evidence regarding the Complainant's prior sexual behavior are also irrelevant and prohibited, subject to two, limited exceptions: (1) where evidence of prior sexual behavior is offered to prove someone other than the Respondent committed the alleged offense, or (2) where prior sexual behavior evidence is specifically about the parties' shared sexual history and is offered to prove consent.]

*Prior Conduct Violations.* The Investigative Team may consider the Respondent's prior conduct violations, where the previous incident was substantially similar to the present allegation(s) and/or the information indicates a pattern of behavior by the Respondent.

*Medical Information.* Any party's medical, psychological, or similar records cannot be accessed, considered, disclosed, or otherwise used as part of this investigative process without the party's voluntary, written consent. Each party has the right to request that evidence regarding his or her mental health diagnosis and/or treatment be excluded from consideration on the basis that it is not relevant to the allegations.

*Legally Recognized Privilege.* Any information protected by a legally recognized privilege (e.g. attorney-client) is deemed irrelevant and precluded from consideration throughout the investigative process, unless properly waived by the party maintaining such privilege.

*Information from Expert Witnesses.* A party may request that information be considered from an expert witness. When such information is deemed relevant to the allegations, the Investigative Team will retain the appropriate expert. Subject to other limitations identified in this Policy, the Investigative Team may include in the investigative record medical, forensic, technological, or other expert testimony and materials (such as writings and recordings) that the Investigative Team deems relevant and reliable. The Investigative Team has the discretion to determine the relevance and reliability of any expert testimony and materials, and, accordingly, the Investigative Team will determine what, if any, expert testimony and materials will be received into the investigative file. The results of polygraph tests and other “lie-detection” techniques will not be considered by the Investigative Team.

### **Investigative Report**

Once the information-gathering stage has concluded and prior to completion of the Investigative Report, the Investigative Team will send each party and the party’s advisor (if any), relevant evidence<sup>3</sup> subject to inspection and review in an electronic format or hard copy.

The parties will have at least 10 business days to submit a short written response, which the Investigative Team will consider prior to completion of the Investigative Report.

After receipt of the parties’ responses, the Investigative Team will then create an Investigative Report that fairly summarizes relevant evidence. The Investigative Report is not intended to catalog all evidence obtained by the Team, but only to provide a fair summary of that evidence.

Only relevant evidence (including both inculpatory and exculpatory – i.e. tending to prove and disprove the allegations) will be referenced in the Investigative Report. The Investigative Team may redact irrelevant information from the Investigative Report when that information is contained in documents or evidence that is/are otherwise relevant.

### **The Investigative Team will not make determinations of responsibility in the investigative report.**

A copy of the report will be provided to the parties and their advisors at least five (5) business days prior to a hearing or any other date when respondent’s responsibility may be determined. The investigative report will be sent to the parties in digital form and parties will not duplicate, alter or copy the investigative report. A single investigative report may be used for allegations arising out of the same set of facts or circumstances, where there are multiple complainants and/or respondents.

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<sup>3</sup> All evidence directly related to the allegations.

The parties are permitted to submit a short written response to the Decision-maker three (3) business days in advance of the hearing. Parties' written responses will be provided to each other for review but no additional responses will be permitted.

### **LIVE HEARING PROCESS**

Upon the conclusion of the investigation, the parties have the opportunity to engage in a live hearing. The live hearing is a closed proceeding; no one other than the Decision-maker, the Respondent, the Complainant, their respective Hearing Advisors, witnesses, the Investigative Team/Title IX Coordinator, and other necessary College personnel may be present during the proceeding. Live hearings may be conducted with all participants physically present in the same location, or, at the College's discretion, may occur virtually using technology that will enable participants to simultaneously view and hear each other. The live hearing will be recorded and a copy of the recording will be made available to the Respondent and the Complainant for their inspection and review. Participants to the live hearing may not record the hearing. Cell phones and recording devices may not be used in the hearing room(s) unless approved by the Decision-maker in advance.

The Decision-maker, whenever possible, will give the Complainant and the Respondent at least ten (10) days advance notice of the hearing. Requests to postpone the hearing may be granted at the discretion of the Decision-maker based on a compelling reason. Because of administrative complexity, where possible, parties should make postponement requests no less than three (3) business days prior to the date of the hearing.

### ***The Decision-maker***

The Decision-maker is tasked with evaluating and analyzing all relevant information in the Investigative Report, as well as any relevant additional submissions and information presented by the parties in the hearing process. The Decision-maker determines whether a violation of Policy occurred based on the preponderance of evidence standard.

The Decision-maker will receive regular training on the definition of sexual harassment under Title IX, the scope of the College's education program or activity, how to conduct hearings, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest and bias. The Decision-maker will also receive training on the technology used at the hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not permitted.

### ***Rules of Evidence***

In order to promote a fair and expeditious live hearing, the parties and their Hearing Advisors must attend a pre-hearing conference with the Decision-maker. The pre-hearing conference assures that the parties and their Hearing Advisors understand the parameters of the live hearing and allows for significant issues to be addressed in advance of the hearing. At the pre-hearing conference, the Decision-maker will address the conduct expectations for the parties and Hearing Advisors at the live hearing (see also "Rules of Decorum"). Additionally, the parties must provide the Decision-maker with a list of the witnesses they intend to question and exhibits they

intend to present at the live hearing. All references to witnesses and exhibits will be made to those contained in the investigative file.

Once the parties have submitted their respective lists of proposed evidence from the investigative file, the Decision-maker will then assess each proposed item to confirm its relevance to the allegations and responses of the matter. The Decision-maker will also ensure that no evidence regarding prior sexual history of the parties is considered, unless the Decision-maker determines at the pre-hearing conference that the evidence meet one of two permitted exceptions: 1) where evidence of prior sexual behavior is offered to prove someone other than the Respondent committed the alleged offense, or 2) where prior sexual behavior evidence is specifically about the parties' shared sexual history and is offered to prove consent. The Decision-maker may, only in exceptional circumstances, grant requests to present evidence not already in the investigative file and retains complete authority to determine how such new evidence may impact the hearing (e.g. if the hearing must be continued until a later date for the Investigative Team to review and present the new evidence to the parties).

During the hearing itself, the Decision-maker has complete authority to assess any questions presented by the parties, and/or their Hearing Advisors, for relevancy. In such instances, the parties, and/or their Hearing Advisors, must wait for the Decision-maker to make a determination of relevance before any answer may be submitted.

### ***The Hearing***

The Complainant, the Respondent, their respective Hearing Advisors, witnesses, and the Investigative Team are afforded the opportunity to participate in the hearing. Each participating individual may be placed in a separate room for the duration of the hearing and may view the proceedings via video conference. When it is an individual's turn to appear before the Decision-maker, that person will appear separately before the Decision-maker. The Complainant and Respondent may have a Hearing Advisor in the room with them at all times. If the hearing is conducted wholly or partially through video conference, an administrator will ensure that each party has the opportunity to appear before or speak directly to the Decision-maker and appropriately participate in the questioning process.

### **Rules of Decorum**

All participants, including parties and Hearing Advisors, are expected to participate in a respectful and non-abusive manner during the hearing. The following behaviors are strictly prohibited for all participants:

- Yelling or screaming
- Throwing, hitting, or any similarly aggressive gesture
- Threatening statements or gestures
- Use of slurs (unless directly relevant to the underlying allegations)
- Intentionally violating the physical space of another hearing participant
- Engaging in any behavior which deliberately disrupts the hearing process

Hearing Advisors are expected to treat all parties and witnesses in a respectful manner at all times, including during the questioning portion of the hearing. A Hearing Advisor should not engage in



questioning that is abusive, intimidating or disrespectful. A Hearing Advisor may not badger a party or witness, engage in unnecessarily repetitive questioning, or during questioning, lean into the personal space of a party or witness.

Violations of the rules of decorum may be raised by either Hearing Advisor or the Decision-maker. If a Hearing Advisor refuses to comply with the Rules of Decorum (for example, by insisting on yelling at the other party), the Hearing Advisor may be removed from the hearing. In this circumstance, the College will provide a new Hearing Advisor if it provided the original advisor. If the original advisor was selected by the party, the party will have five (5) business days to replace the advisor.

These rules apply equally to both parties, their Hearing Advisors, Decision-maker, witnesses, and any other person present during the hearing.

### ***Hearing Process Order***

#### **Opening**

The Decision maker will open and establish the rules and expectations for the hearing.

#### **Opening Statements**

The Complainant and the Respondent may provide opening statements to the Decision-maker. Should they choose to do so, the opening statement may not exceed three (3) minutes. The party's Hearing Advisors may assist them with drafting an opening statement and the parties may read from a written document. However, the party's Hearing Advisors may not present the opening statement on their behalf.

#### **Questions by the Decision-maker**

The Decision-maker may ask questions of the Complainant, Respondent, and witnesses, including the Investigative Team. Generally, questions will focus on statements made by the parties, information contained in the Investigative Report, the Investigative Team's analysis, and any other information provided to the Decision-maker. The Decision-maker will pose any questions they have to the hearing participants prior to the Hearing Advisors' questioning of the participants and may ask any necessary follow up questions after questions from the Hearing Advisors.

#### **Questions by the Hearing Advisors (Cross Examination)**

Each party's Hearing Advisor may pose ***relevant*** questions to the opposing party and witnesses (including the Investigative Team). Relevant questions include those questions that tend to prove or disprove an element of the allegation(s) being considered by the Decision-maker. During this live-cross examination, the Hearing Advisor will ask the other party or parties and witnesses relevant questions and follow-up questions, including those challenging credibility directly, orally and in real time. Before a Complainant, Respondent, or witness answers a question, the Decision-maker will determine whether the question is indeed relevant and therefore can be answered. If the Decision-maker decides to exclude a question, the Decision-maker will provide an explanation as to why the question is not relevant.

The parties may not pose questions to each other or the witnesses. If a party does not have a Hearing Advisor, the College will provide a Hearing Advisor for the live hearing without fee or charge to that party. The Hearing Advisor will be selected by the College and is not required to be an attorney even if the opposing party's advisor is an attorney. A party should alert the Decision-maker as early as possible if the party needs a Hearing Advisor so that the arrangements can be made and the process can continue to progress in a timely manner.

Parties may call expert and character witnesses for direct and cross-examination. The Decision maker will also admit and allow testimony regarding polygraph tests and other procedures that are outside of standard use in academic and non-academic conduct processes.

**If a party or a witness does not submit to being questioned during the live hearing, the Decision-maker may not rely on any statement of that individual in reaching a determination regarding responsibility; provided, however, that the Decision-maker cannot draw an inference about the determination regarding responsibility based solely on that individual's absence from the live hearing or refusal to answer questions.**

#### Closing Statements

At the conclusion of the cross-examination and questioning by the Decision-maker, the Complainant and Respondent will have the opportunity to present closing statements to the Decision-maker. Closing statements may not exceed three (3) minutes, and, similar to the opening statements, the closing statements must be presented by the parties, not their Hearing Advisors. The Hearing Advisors may assist in the preparation of the closing statement and the parties may read from a written document.

#### ***Standard of Proof, Determination and Sanction***

Following the investigation and conclusion of the hearing, the Decision-maker will render a written determination of whether the Respondent is responsible for the conduct alleged and if found responsible, the Decision-maker will determine the sanction. The Decision-maker will use "preponderance of the evidence" as the standard of proof to determine whether a violation of the Policy occurred. Preponderance of the evidence means that the Decision-maker must determine whether, based on the evidence presented, the Respondent was more likely than not to have engaged in the conduct at issue.

The Decision-maker will find the Respondent responsible or not responsible after a review of all of the statements and evidence summarized in the Investigative Report, the written statements submitted by the Complainant and the Respondent, and the statements, testimony, and evidence at the hearing. The Decision-maker will generally render a determination decision within ten (10) business days after the conclusion of a hearing, which will be delivered to the parties simultaneously, and will include the following explanation of the basis for the decision which will include identification of allegations, description of procedural steps taken from receipt of formal complaint to determination, including any notifications, finding of fact, conclusions; statement of and rationale for the result as to each allegation, any disciplinary sanctions and whether remedies will be provided; procedures and permissible bases for appeal.

## APPEAL OF DETERMINATION AND SANCTION

Complainants and Respondents are afforded appeal rights as it pertains to the determination of the Decision-maker. Appeals must satisfy one or more of the following criteria:

- **Procedural Irregularity:** An appeal based on procedural irregularity must identify with specificity each alleged irregularity within the investigation, hearing, and/or sanctioning process and the ways in which the specified irregularity(s) affected the outcome of the matter. Disagreement with the finding or sanction is not, by itself, a ground for appeal; or
- **New Evidence:** An appeal based on new evidence must explain why this information was not reasonably available at the time the determination was made and how this information could affect the outcome of the matter. Information not provided because a party declined to participate or withdrew from the process cannot be considered new information for the purpose of appeal. This includes situations where a party declines to participate on the advice of their advisor; or
- **Conflict of Interest/Bias:** An appeal based on conflict of interest or bias must explain how the Title IX Coordinator, Investigative Team, or Decision-maker had a conflict of interest or bias for or against complainants or respondents generally, or the individual Complainant or Respondent, that affected the outcome of the matter; or
- **Excessiveness or Insufficiency of the Sanction:** An appeal based on the imposed sanction must explain why the sanction is inappropriate based on the weight of the information provided during the investigation, hearing and/or sanction.

The appeal of the determination and/or sanction must be submitted to the Title IX Coordinator within five (5) business days from the date the determination was issued. No attachments or exhibits will be accepted. References to evidence should be made to the materials included in the hearing record. The Title IX Coordinator will notify the non-appealing party in writing upon receipt of the appeal and provide a copy of the appeal. The non-appealing party may provide a written response to the appeal and if the non-appealing party decides to submit a written response to the Title IX Coordinator they must do so within five (5) days. If both the Complainant and the Respondent appeal, the appeals will be considered concurrently and each party will have the opportunity to review and respond to the other party's appeal.

If the appeal outlines the appropriate criteria for consideration, the Title IX Coordinator will designate an Appellate Officer<sup>4</sup> for review. The Appellate Officer for staff respondents is the Associate Vice President and Chief Human Resources Officer (or designee). The Appellate Officer for faculty respondents is the Vice Provost for Student Affairs (or designee). As it relates to appeals of the Decision-maker's determination, the Appellate Officer will not initiate a review of substantive issues of fact, or reach a new determination of whether a violation of the

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<sup>4</sup> The Appellate Officer will receive relevant training at least once a year on how the adjudicatory and appeal process works, the definition of sexual harassment, the scope of the institution's education program or activity, how to conduct an investigation and the grievance process including hearings, appeals, and informal resolution processes, as applicable, how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias, and the sensitive issues in reviewing these cases.

Policy has occurred. The Appellate Officer is strictly limited to determining if an appeal should be granted based on the above-cited criteria for appeal. Similarly, the Appellate Officer will not issue a new sanction but rather determine whether the issued sanction was excessive or insufficient.

In making an assessment, the Appellate Officer will have access to and the ability to review all applicable documents, including the formal complaint, complete Investigative Report, all exhibits, written statements submitted to the Decision-maker, impact statements, and a recording of the hearing (if applicable). The Appellate Officer may also request additional information from the Title IX Coordinator, Investigative Team, and/or Decision-maker regarding issues of procedural irregularity or new evidence as applicable. Additionally, in the event a party submits an appeal containing inaccurate facts or information outside the scope of the Policy, those portions of the information may be redacted and/or the Title IX Coordinator may provide a curative instruction to the Appellate Officer.

The Appellate Officer may take the following actions:

- Deny the appeal, thereby upholding the decision of the Decision-maker; or
- Grant the appeal and return the matter to the Decision-maker or Investigative Team, for further consideration.

If the matter is returned to the Decision-maker or Investigative Team, the Appellate Officer will provide instructions regarding the nature and extent of the reconsideration. Following reconsideration by the Decision-maker or Investigative Team, further proceedings will be conducted as appropriate. In instances where an appeal is granted for possible conflict of interest/bias, the Title IX Coordinator may assign other College personnel for reconsideration of the matter.

The Appellate Officer will notify the Title IX Coordinator of their decision, and the Title IX Coordinator will simultaneously notify the Complainant and the Respondent of the Appellate Officer's decision in writing. Appeal decisions will be rendered generally within twenty (20) business days after the receipt of the last written submission by either of the parties, depending on the availability of the Appellate Officer at the time of the appeal. Title IX Coordinator will notify the parties if there is a delay. There is no further College recourse beyond the decision of the Appellate Officer.

Failure to meet the deadline for appeal will result in waiver of the right to appeal. The College reserves the right to investigate and take any necessary action of its own accord based on new information or events that were not known during an initial investigation. A determination will be considered “final” after the time period to file an appeal has expired, or if a party does file an appeal, after the appeal decision has been sent to the parties.

*The Office of the Vice President for Diversity and Community Affairs is the responsible office for this policy and procedures. If you have any questions related to this policy and procedures, you may contact the Title IX Coordinator directly or reach out to Title IX Staff at [odca@tc.columbia.edu](mailto:odca@tc.columbia.edu).*

Effective Date: August 14, 2020