

Clemson University
EMPLOYEE TITLE IX PROCESS

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I. PURPOSE

This process is intended to comply with Title IX of the Education Amendments of 1972 (hereinafter "Title IX") and the related federal regulations regarding the review of sexual harassment complaints by higher education institutions. Title IX is a civil rights law that prohibits discrimination based on sex in education programs or activities that receive federal financial assistance. Title IX states "No person in the United States shall, on the basis of sex, be excluded from participation in, or denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."

Clemson University is committed to responding promptly and effectively when it learns of any form of possible discrimination based on sex. This includes responding to reports of sexual harassment as part of its efforts to stop the harassment and prevent the recurrence of possible sex discrimination. If any employee has questions or concerns regarding or needs to report possible discrimination based on sex, contact the Title IX Coordinator, or his/her designee.

All Title IX Formal Complaints will be initially filed with the Title IX Coordinator, or his/her designee who will conduct an initial review and make a finding that allegations meet the minimum threshold requirements of a Title IX Formal Complaint. The Title IX Coordinator also will consider supportive measures in consultation with Human Resources as needed. Human Resources is responsible for handling only those Formal Complaints referred to Human Resources by the Title IX Coordinator, or his/her designee. When a Formal Complaint is referred to Human Resources by the Title IX Coordinator, or his/her designee, this Employee Title IX Process will be followed.

II. DEFINITIONS

A. Administrative Hearing Board – A hearing body consisting of a Chief Hearing Board Chair and at least three voting members. If the Complainant and/or Respondent is a faculty member, at least one voting member will be a faculty member. If the Complainant and/or Respondent is a staff member, at least one voting member will be a staff member. The

Administrative Hearing Board hears cases where the alleged conduct, if true, would warrant disciplinary action and cases meeting the threshold requirements of Title IX as determined by an initial review by the Title IX Coordinator, or his/her designee.

B. Advisors - A person who assists Complainants and Respondents at all meetings and hearings regarding Title IX Formal Complaints. At any hearing, both parties are required to have an advisor, as it is the advisor who will cross-examine witnesses on behalf of the Complainant and Respondent. The advisor can be an attorney but does not have to be an attorney. Upon the request of the Complainant or Respondent, the University will select and provide an advisor at no cost. More information about the specific role of an advisor is set forth in section III.G. below.

C. Business Days – Days when the University offices on the main campus are open. This does not include weekends, holidays, or inclement weather days when the University offices on the main campus are not open. Time periods referenced in these procedures do not include the day of the event triggering the beginning of a time period.

D. Case Manager – The Case Manager shall be appointed by Human Resources and shall be responsible for guiding the case through the disciplinary process. At any time during the disciplinary process, Human Resources may assume the duties of the Case Manager. Duties may include, appointing members of the Administrative Hearing Board, scheduling of the time, date and location of the hearing, transmitting and receiving communications and documents to and from the members of the Administrative Hearing Board, the parties, and other witnesses.

E. Chief Hearing Board Chair – The Chief Hearing Board Chair presides over the Administrative Hearing Board. The Chief Hearing Board Chair is a nonvoting member of the Administrative Hearing Board who shall, among other things, preserve order at the hearing, rule on all questions of evidence and procedure; may request the appearance of witnesses; and manage the hearing in accordance with University procedures. The Chief Hearing Board Chair is appointed by the Chief Human Resources Officer (CHRO).

F. Complainant - The individual who is alleged to be the victim of conduct that could constitute sexual harassment.

G. Education Programs and Activities – The Title IX statute applies to persons in the United States with respect to education programs or activities that receive Federal financial assistance. Education programs or activities includes locations, events, or circumstances over which the school exercised substantial control over both the Respondent and the context in which the sexual harassment occurred, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution (such as a fraternity or sorority house). Title IX applies to all University education programs or activities, whether such programs or activities occur on-campus or off-campus.

H. Formal Complaint - A document filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that the University investigate the allegation of sexual harassment.

I. Investigator – Any person authorized by Human Resources to conduct investigations into allegations of a potential Title IX violation.

J. Person Filing a Formal Complaint - Any third party (including parents or guardians) as well as the Complainant may report sexual harassment. However, the Complainant is the person alleged to be the victim. If a third party files a complaint that third party will be referred

to as the “Person Filing a Formal Complaint”. Third parties do not have the same right to information, participation, advisors and other rights given to the Complainant in this procedure and under the Title IX regulations.

K. Presumption of No Responsibility until Final Determination – There is a presumption in the process that the Respondent is not responsible for the alleged conduct until a final determination regarding responsibility is made at the conclusion of the grievance process.

L. Remedies – Remedies must be provided to a complainant only after a respondent is found responsible for the alleged sexual harassment. They must be designed to maintain the complainant’s equal access to education and may include the same individualized services already provided as supportive measures. Remedies need not be non-punitive, non-disciplinary and need not avoid burdening the respondent like supportive measures.

M. Respondent - An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

N. Sexual Harassment for purposes of Title IX

Sexual Harassment for Title IX purposes covers three types of misconduct based on sex.

- i. Any instance of quid pro quo harassment by a Clemson University employee which is defined as an employee conditioning the provision of an aid, benefit, or service of the university on and individual’s participation in unwelcome sex. [Note: Quid pro quo offenses are not evaluated for severity, pervasiveness, offensiveness, or denial of equal educational access because the misconduct is sufficiently severe to deprive a person of equal access.]
- ii. Any unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal educational access to a Clemson education program or activity.
- iii. Any instance of sexual assault (as defined in 20 USC 1092(f) (6) (A) (v)), dating violence, domestic violence, or stalking as defined in the Violence Against Women Act (as defined in 34 USC 1229(a) (8, 10 or 30). See definitions of Sexual Assault and/or Battery, Dating Relationship Violence, Domestic Violence and Stalking included in Clemson University’s Policies and Procedures Related to Sexual Harassment and Sexual Violence - https://media.clemson.edu/humanres/policies_procedures/policy-and-procedures-related-to-sexual-harassment-and-sexual-violence-VAWA.pdf

O. Standard of Evidence – A preponderance of evidence standard will be used in this process. That means that cases shall be determined as to whether it is more likely than not that the Respondent violated Title IX. “More likely than not” means that after assessing the quality of the evidence, the adjudicator will only find a Respondent responsible for the alleged violation if the evidence leaves them reasonably convinced that a finding of responsibility is justified. That is, the adjudicator must find that there is sufficient evidence that is relevant, probable, and persuasive to convince the adjudicator that the Respondent committed the alleged policy violation, and that the evidence supporting a finding of responsibility outweighs any evidence that the Respondent is not responsible for the alleged misconduct.

P. Supportive Measures - Individualized services reasonably available that are non-punitive, non-disciplinary, available without fee or charge to complainant or respondent, and not unreasonably burdensome to the other party while designed to ensure equal educational access, protect safety, or deter sexual harassment. Supportive measures may include counseling, extension of deadlines or other course related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work locations, leaves of absence, increased security and monitoring of certain areas of the campus and other similar measures.

Q. Witness – A person called to meet with an investigator or called upon to testify before an Administrative Hearing Board. Witnesses may include fact witnesses, character witnesses, expert witnesses or other persons that an investigator or the Chief Hearing Board Chair determines to be helpful to the investigator or adjudication process.

III. GENERAL JURISDICTIONAL AND PROCESS REQUIREMENTS

A. Initial Title IX Formal Complaint Review

All Title IX Formal Complaints will be initially filed with the Title IX Coordinator, or his/her designee who will conduct an initial review and make a finding that allegations meet the minimum threshold requirements of a Title IX Formal Complaint. Some Title IX reports may not result in the Title IX Coordinator issuing a Title IX Formal Complaint. Any questions about this initial threshold review of reports and determination as to whether a report results in issuance of a Title IX Formal Complaint should be directed to the Title IX Coordinator, or his/her designee. Human Resources is responsible for handling only those Formal Complaints referred to Human Resources by the Title IX Coordinator, or his/her designee.

B. Scope

The Employee Title IX Process applies to all current University employees. Human Resources is responsible for processing Title IX Formal Complaints referred to Human Resources by the Title IX Coordinator, or his/her designee. If a Formal Complaint contains allegations arising under Title IX and allegations arising under other University policies and procedures, Human Resources is authorized to separate the allegations as Human Resources deems appropriate to ensure that all allegations are addressed in a timely manner. Similarly, to the extent information is

discovered during the Employee Title IX Process suggesting that other University policies and procedures may have been violated, Human Resources is authorized to initiate a separate and independent investigation that is outside the scope of Employee Title IX Process that will be handled in accordance with applicable University policies and procedures. Such investigation and any potential discipline may take place simultaneously while the Title IX Formal Complaint proceeds or be held in abeyance until the Title IX Formal Complaint process is complete. Evidence obtained can be shared and considered by both investigators in the separate processes.

C. Pending Criminal or Civil Action

For the protection of its employees, the University must act promptly to address any issue of misconduct. Therefore, disciplinary actions are not subject to challenge or postponement on the grounds that civil action or criminal charges involving the same incident have been dismissed, reduced or are pending in civil or criminal court.

D. Timeliness

Normally Human Resources will attempt to complete review, investigate, and adjudicate a Formal Complaint within a reasonable time period, generally not more than 75 business days from receipt of the Formal Complaint from the Title IX Coordinator, or his/her designee. Factors including, but not limited to, academic term breaks, criminal investigations, case complexity and access to witnesses may result in investigation and adjudication extending beyond 75 business days. In that event, Human Resources will notify the parties of the need to extend the period of investigation and adjudication and the reason(s) therefore.

E. Access to Information

To the extent permitted by law, the Complainant and the Respondent in Title IX cases will be informed in writing of the outcome of the hearing and any appeal. Throughout the investigation and adjudication of any alleged Title IX violation, each party will be provided written notice in advance of any initial or subsequent interviews, meetings, or hearings so that the party has enough time to prepare for meaningful participation. The Complainant and Respondent also may receive records and reports as part of the Title IX investigation and grievance process as explained more fully throughout the Employee Title IX Process or as otherwise required by law.

F. Informal Resolution

At any stage after a Formal Complaint has been received by Human Resources, an informal resolution process may be requested by either party by making such request in writing to the Title IX Coordinator, Chief Human Resources Officer (CHRO), and/or Associate Chief Human Resources Officer (ACHRO). If the Title IX Coordinator, CHRO, or ACHRO determines that informal resolution is not appropriate, he/she will notify the requestor in writing. If the Title IX Coordinator, CHRO, or ACHRO determines an informal resolution is appropriate, he/she will meet with the Complainant and Respondent to determine whether an informal resolution can be

negotiated and agreed upon by the parties. Parties retain the right to withdraw from the informal resolution process at any time at which point the formal investigation and adjudication process will resume.

G. Right to and Role of the Advisor

The Complainant and the Respondent may have the assistance of an advisor. A party may, at their own expense, choose an external advisor, who may be an attorney. They may also choose any other willing person to serve as an advisor. Alternatively, either party may request that Human Resources provide an advisor. The Human Resources provided advisor shall provide guidance throughout the Title IX process, including through any investigation, adjudication, or appeal. Whether a party chooses their own advisor or whether Human Resources provides an advisor, each party must have an advisor present during the hearing. Advisors are permitted to ask the other party and any witnesses all relevant questions, and follow up questions, including questions challenging credibility. Such cross-examination must be conducted directly, orally, and in real time by the party's advisor and never by a party personally.

H. Cooperation

The Complainant, the Respondent, witnesses, advisors, and other individuals associated with the Title IX process are expected to cooperate and not disrupt the process. University Title IX policy prohibits the making of false or misleading statements during the conduct process or otherwise being disrespectful to any investigator, Administrative Hearing Board, Chief Hearing Board Chair, or other University official or designee assisting in the investigation or grievance process.

I. Non-Retaliation

No employee shall retaliate against anyone who makes reports regarding potential University-related violations of laws, regulations or University policies or otherwise cooperates in the investigation or adjudication of such a report. Retaliation is any conduct causing any interference, coercion, restraint or reprisal against a person making a complaint or against a person assisting in any investigation or resolution of the complaint. Allegations of retaliation should be reported immediately to the Human Resources Case Manager.

IV. INVESTIGATION BY HUMAN RESOURCES

A. Notice of Investigation

Within three (3) business days following receipt of a Formal Complaint, the Human Resources Case Manager will issue a Notice of Investigation to the Respondent and to the Complainant. Notices of Investigation shall be in writing and shall include the following: the names of the Complainant and Respondent; a description of the alleged misconduct; the date, time and location of the alleged misconduct; the specific applicable University policies alleged to have been violated; a statement that the Respondent is presumed not responsible for the alleged

conduct and the determination of responsibility is made at the conclusion of the conduct process; links to policies alleged to have been violated; notice of the right of parties to be accompanied by a Human Resources provided advisor or other advisor of their choice (who may, at their own expense, be an attorney) to any meetings related to the Title IX process; notice that the parties may inspect and review any evidence; notice that University Title IX policy prohibits the making of false or misleading statements during the conduct process; a description of the possible disciplinary actions if an employee is ultimately found responsible for the alleged University Title IX policy violations; if applicable, links to the policies and procedures pertaining to cases of sexual misconduct; and a notice of non-retaliation.

B. Conduct of Investigation

Investigations will be conducted by trained, impartial investigators. Investigators may be Human Resources or other University personnel, or external investigators appointed by Human Resources.

The purpose of the investigation is to gather facts for the Administrative Hearing Board and issuance of a final report. Generally, the investigation and issuance of the investigator's final report will be concluded within 35 business days of the issuance of the Notice of Investigation. The investigator will notify the Complainant and Respondent if circumstances, such as academic breaks or witness availability, will require an investigation to extend beyond 35 business days, and provide an estimate of the additional time that will be required.

During the investigation, the investigator will, to the extent reasonably possible, meet separately with the Complainant, the Respondent, and other witnesses. All meetings shall be preceded by written notice allowing enough time for preparation, and the advisor shall be permitted to attend. The investigator will impartially seek both inculpatory and exculpatory evidence from all parties and witnesses. Parties will have an equal opportunity to provide evidence and present witnesses, including fact and expert witnesses. Further, the parties will have equal opportunity to inspect and review any evidence obtained as part of the investigation that directly relate to the Complainant's allegations, including any inculpatory or exculpatory evidence, so that the parties will have a meaningful opportunity to respond to the evidence prior to the conclusion of the investigation.

During the investigation, the investigator may discover information relating to additional policy violations. The investigator may choose to address information relating to those additional policy violations in the investigative report, but those policy violations will not be addressed within the Employee Title IX Process. Human Resources may choose to pursue those additional policy violations separately from the Employee Title IX Process.

Throughout the investigation each party will be provided with written notice in advance of any initial or subsequent interviews to allow each party adequate time to prepare for meaningful

participation.

Except as authorized by Human Resources, video, audio, stenographic, photographic, or other recording of meetings with investigators is prohibited.

C. Investigative Report

After gathering the evidence, the investigator will prepare a draft report summarizing evidence collected, both inculpatory and exculpatory, including contested and uncontested facts, and identifying any suggested witnesses that were not interviewed and the reason they were not interviewed. To the extent permitted by law, the Investigator will send to each party and the party's advisor the draft investigative report and any evidence collected that relates to the Complainant's allegations, regardless of whether such evidence will be relied upon at the hearing or in the report.

Parties will then have 10 business days to submit a written response indicating their agreement or disagreement with the contents of the draft report, along with their reasons for the same. The investigator will then consider the parties' responses, if any, in preparing the final report.

At least 10 business days prior to the hearing, the investigator will send to the parties and the parties' advisors the final report (including any supporting documents or evidence referenced in the report) for their written response. The final report, and any written responses, will be promptly forwarded to Human Resources for review.

If the CHRO or his/her designee finds that pertinent information is missing from the report or that the report is otherwise incomplete, then the investigative report may be sent back to the investigator for further inquiry.

If the CHRO or his/her designee determines that the investigation is complete or that further investigation would not be constructive, then the report shall be submitted to the Chief Hearing Board Chair.

V. PRE-HEARING PROCESS

A. Written Notice of Hearing and Allegations

Written notice of the hearing and the final allegations alleged against the Respondent will be sent to the parties by the Human Resources Case Manager. The notice will include the following: the date, time and location of the hearing; a description of the alleged misconduct; the date, time and location of the alleged misconduct; the specific applicable University policies alleged to have been violated; links to policies alleged to have been violated; notice of the right of parties to be accompanied by a Human Resources provided advisor or other advisor of their choice (who may, at their own expense, be an attorney) at the hearing; a description of the possible disciplinary actions if an employee is ultimately found responsible for the alleged University Title IX policy

violations; if applicable, links to the policies and procedures pertaining to cases of sexual harassment; and a notice of non-retaliation.

Notices will allow enough time for the parties to reasonably prepare for the hearing and the completion of all pre-hearing procedures the Chief Hearing Board Chair may deem necessary. Absent extenuating circumstances or the agreement of the Complainant and Respondent, in no case shall a hearing be scheduled less than 15 business days after the date of the Written Notice.

B. Appointment of Administrative Hearing Board

The Chief Hearing Board Chair shall preside at and preserve order at the hearing; rule on all questions of evidence and procedure during the pre-hearing process and during the hearing; may request the appearance of witnesses; and manage the hearing in accordance with University procedures. The pre-hearing process is not required but is within the Chief Hearing Board Chair's discretion if there are matters the Chief Hearing Board Chair would like to address with the parties prior to the actual hearing or matters where the determinations are needed in order for the actual hearing to proceed.

In addition to the Chief Hearing Board Chair, the Human Resources Case Manager will also appoint at least three additional members to the Administrative Hearing Board. The Administrative Hearing Board may be comprised of individuals external to the University. All Administrative Hearing Board members will have received appropriate training in University Title IX policy and hearing board procedures.

Upon appointment, Administrative Hearing Board members will also be provided with a copy of the notice of hearing, names of the parties and the investigative report (including the parties' written responses).

C. Challenges /Recusal of Administrative Hearing Board Members

If the CHRO or Chief Hearing Board Chair determines that the Chief Hearing Board Chair has a conflict or is unavailable, the CHRO will appoint another individual to chair the Administrative Hearing Board in the Chief Hearing Board Chair's absence.

Administrative Hearing Board members will promptly disclose to the Human Resources Case Manager any prior interactions they may have had with the parties or other potential witnesses, prior knowledge of the details of the case, or any other circumstances that lead the Administrative Hearing Board member to believe they would not be able to render an impartial assessment of the evidence or determination of responsibility, in which case the Administrative Hearing Board member shall be recused and a replacement Administrative Hearing Board member appointed.

Either simultaneously with the notice of hearing or within 5 business days thereafter, the parties will be notified of the identity of the Administrative Hearing Board members. The parties will

each have 3 business days to file written requests for recusal of Administrative Hearing Board members based on their prior interaction with a board member. If the Human Resources Case Manager determines, after reviewing the written requests for recusal or upon his/her own volition, that the nature of the prior interaction is such that a reasonable person would conclude that the Administrative Hearing Board member would be unable to render an impartial assessment of the evidence or determination of responsibility, the Human Resources Case Manager shall recuse the member and a replacement Administrative Hearing Board member shall be appointed.

D. Notice of Proposed Witnesses

At least 10 business days prior to the hearing, the Chief Hearing Board Chair and the parties shall provide the Human Resources Case Manager with a list of the witnesses they would like called at the hearing, along with a brief statement describing the relevance of each witness's expected testimony. The Chief Hearing Board Chair, in consultation with the Human Resources Case Manager, will review the lists submitted and approve a final consolidated list of all witnesses, which may or may not include all witnesses requested by the parties. The Human Resources Case Manager will within 3 business days share the consolidated list of all witnesses and the person requesting them with the parties along with notice of the University's non-retaliation policy. Testimony supporting the character of either party will take the form of written statements of no more than 2 pages in length and be limited to no more than 3 per party. Character witness statements may be provided to the Chief Hearing Board Chair at the time of the hearing.

E. Notification of Witnesses

At least 5 business days prior to the hearing the Human Resources Case Manager will contact the named witnesses and require their appearance. The Human Resources Case Manager will also ask any witnesses not affiliated with the University appear. However, the University cannot guarantee the appearance or participation of witnesses.

F. Notification of Additional Evidence

Simultaneously with their notices of proposed witnesses discussed above, the parties shall provide the Human Resources Case Manager with copies of documents or other evidence they intend to introduce at the hearing. The Chief Hearing Board Chair, in consultation with the Human Resources Case Manager, will review the proposed documents and additional evidence and approve a list of documents and additional evidence that can be introduced at the hearing. The Human Resources Case Manager will share the approved documents and additional evidence and the person requesting them with the parties along with the notification of witnesses.

G. Objections to Witnesses, Documents, or Additional Evidence

Within 3 business days of receipt of the consolidated list of witnesses and evidence, the parties may file a written objection with the Human Resources Case Manager to the appearance of any witness, or the introduction of any document or additional evidence, based on considerations of relevance, redundancy, or unjustified failure of a party to identify and disclose a witness, document or other evidence earlier in the investigation. The Human Resources Case Manager will forward any such objection and responses to the Chief Hearing Board Chair and, if applicable, to the other party. The Chief Hearing Board Chair may rule in advance of the hearing whether to allow or exclude witnesses, documents or additional evidence, based on considerations of relevance, redundancy, or unjustified failure of a party to identify and disclose a witness document or other evidence earlier in the investigation. The Human Resources Case Manager will inform the parties of the decision of the Chief Hearing Board Chair and confirm with any challenged witnesses whether they should or should not appear at the hearing.

VI. HEARING PROCEDURES

A. Closed to the Public

All Hearing Board meetings are closed to the public. Only Administrative Hearing Board members, the parties, their advisors, witnesses, and authorized University personnel may be present.

B. Recording

Except as authorized by the Human Resources Case Manager, video, audio, stenographic, photographic, or other recording of hearing proceedings are prohibited. The Human Resources Case Manager will arrange for one authorized recording, whether audio or audiovisual or transcript, and make it available for the parties to inspect and review.

C. "Live" Hearing

A live hearing will be scheduled that will allow the parties to be in separate rooms with technology enabling the Administrative Hearing Board members and the parties to simultaneously see and hear the party or the witness answering questions. Such request should be made by a party at least 10 business days prior to the hearing so that appropriate resources can be obtained for the live hearing.

D. Sequestration of Witnesses

The parties and their advisors have the right to be present throughout the hearing. Each party is permitted only one advisor. Normally, subject to the discretion of the Chief Hearing Board Chair, other witnesses will be allowed in the hearing room only during the time they are being questioned.

E. Participation by the Parties

Neither the Complainant nor the Respondent is required to be present at the hearing. If they are present, they may elect not to testify, but may nonetheless question through their advisor, their own and other witnesses. In addition, the Chief Hearing Board Chair, in his/her discretion, may direct that questioning of the Complainant or Respondent take place remotely by means of available technology, provided the party or the witness answering questions may be seen by the Administrative Hearing Board and the other party throughout their testimony. Refusal of the Complainant or Respondent to testify or submit a written statement will not be the basis of a finding of responsibility. If, however, a party does not submit to cross-examination at the live hearing, the Administrative Hearing Board must not rely on any statement of that party in reaching a determination regarding responsibility.

F. Participation by Witnesses

Other than Complainants and Respondents, University students and employees are required to attend and provide testimony unless compliance would result in unavoidable hardship or substantial interference with University operations. If for good cause a witness is unable to be present at the hearing, the Chief Hearing Board Chair may allow testimony and questioning via available technology, provided the witness may be seen by the Administrative Hearing Board and the parties throughout their testimony. If a witness does not submit to cross-examination at the live hearing, the Administrative Hearing Board must not rely on any statement of that witness in reaching a determination regarding responsibility.

Q. Questioning of Parties and Witnesses

Advisors are required to ask the other party and any witnesses all relevant questions and follow up questions, including those questions challenging credibility. Such cross-examination must be conducted directly, orally, and in real time by the party's advisor and never by a party personally. Administrative Hearing Board members may directly question the parties and all other witnesses. Only relevant cross-examination and other questions may be asked of a party or a witness. Before a Complainant, Respondent or witness answers a cross-examination or other question, the Chief Hearing Board Chair must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with the Respondent are offered to prove consent.

R. Order of Proceedings

Subject to the discretion of the Chief Hearing Board Chair, the hearing shall be conducted as follows:

1. Call to order and introduction of Administrative Hearing Board members, Complainant, Respondent, and others in the room.
2. Brief summary of purpose and rules of hearing.
3. Any procedural rulings (for example, any new or pending objections regarding witnesses, evidence or composition of the Administrative Hearing Board).
4. Reading of the alleged misconduct and policy violation(s).
5. Reference to all procedural notices given to the parties and to the dates the notices were sent.
6. Reading by Chief Hearing Board Chair of all uncontested and relevant facts as set forth in the investigator's report.
7. Invitation to the Complainant and then the Respondent, to make opening remarks.
8. Questioning of witnesses called by the Administrative Hearing Board (these may include but are not limited to the Complainant, the Respondent, and the Investigator). Administrative Hearing Board witnesses will be questioned first by Administrative Hearing Board members, then by the Complainant, then by the Respondent.
9. Questioning of any additional witnesses called by the Complainant. Complainant's witnesses will be questioned first by Administrative Hearing Board members, then by the Complainant's advisor, then by the Respondent's advisor. Administrative Hearing Board members may then pose follow-up questions.
10. Questioning of any additional witnesses called by the Respondent. Respondent's witnesses will be questioned first by Administrative Hearing Board members, then by the Respondent's advisor, then by the Complainant's advisor. Administrative Hearing Board members may then pose follow-up questions.
11. Questioning of any additional witnesses deemed necessary by the Chief Hearing Board Chair considering the evidence presented. (This may be of the Complainant, the Respondent, prior witnesses, or additional witnesses, as deemed necessary by the Chief Hearing Board Chair. In some cases, this may require adjournment of the hearing in order to secure the attendance of the witnesses).
12. Invitation for any closing remarks, first by the Complainant, then by the Respondent.
13. Adjournment of the hearing for deliberation and adjudication by the Administrative Hearing Board.

Throughout the hearing, rulings concerning procedure, the appearance and questioning of the parties and witnesses, continuances, and the introduction of evidence are the responsibility of and at the discretion of the Chief Hearing Board Chair. The Case Manager or other University personnel or their designees may advise the Chief Hearing Board Chair on questions of procedure, witnesses, and evidence.

VII. ADJUDICATION

If after assessing the evidence and applying the standard of proof, the Administrative Hearing Board determines no University Title IX policy violation occurred or that the Respondent was not responsible for the conduct constituting the University Title IX policy violation, the Administrative Hearing Board must issue a determination of non-responsibility.

If after assessing the evidence and applying the standard of proof, the Administrative Hearing Board determines the University Title IX policy violation occurred and that the Respondent was responsible for the conduct constituting the University Title IX policy violation, the Administrative Hearing Board must issue a determination of responsibility. The Administrative Hearing Board must then determine the appropriate sanction. A specific sanction is neither presumed nor required. An appropriate sanction should be decided on an individualized basis and may take into consideration the facts and circumstances, including any mitigating or aggravating factors, the nature and seriousness of the offense, the Respondent's prior disciplinary history, and the effect on the Complainant or the University community. The determination of appropriate sanction is made by a majority vote of the voting Administrative Hearing Board members.

To the extent any evidence was presented during the hearing that may give rise to policy violations separate and apart from the University Title IX policy, the Administrative Hearing Board will make no determination on those potential, additional policy violations but such evidence may be forwarded to the Director, Staff and Faculty Relations for appropriate investigation and handling as a separate matter.

VIII. WRITTEN DETERMINATION

Within 5 business days of reaching a determination, the Administrative Hearing Board must issue a written decision setting forth its conclusions and including the rationale for either its determination of responsibility or non-responsibility, and, if applicable, for the sanctions imposed. This written determination must include the following:

- A. Identification of the allegations potentially constituting violation of the University Title IX policy;
- B. A description the procedural steps taken from the receipt of the Formal Complaint from the Title IX Coordinator through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- C. Findings of fact supporting the determination;
- D. Conclusions regarding the application of the University's Title IX policy to the facts;
- E. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions imposed, and whether remedies designed to restore or preserve Complainant's equal access to the University's education program or activity will be provided to the Complainant; and

F. The University's procedures and permissible bases for the Complainant or the Respondent to appeal.

The determination regarding responsibility becomes final either on the date that the University provides the parties with the written determination for the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

The Title IX Coordinator is responsible for effective implementation of any disciplinary sanctions or any remedies upon the completion of the grievance process to include exhaustion of appeals.

IX. APPEALS

Any party can appeal a determination regarding responsibility but only on the following grounds:

- A. Procedural irregularity that affected the outcome of the matter;
- B. New evidence that was not reasonably available at the time the determination regarding responsibility was made, that could affect the outcome of the matter; and
- C. The Administrative Hearing Board, investigator, or 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 outcome of the matter.

The appeal must clearly state the ground(s) for the appeal. Dissatisfaction with the outcome is not, by itself, grounds for an appeal.

Appeals must be submitted to the CHRO or his/her designee within 5 business days of the receipt of the decision from the Administrative Hearing Board. Such appeals must be in writing and be delivered to the Office of Human Resources with a copy to the Title IX Coordinator. The other party will receive written notification when an appeal is filed. If the appeal is not submitted within the allotted time, the decision of the Administrative Hearing Board becomes the final decision.

Upon receipt of a properly filed appeal, the CHRO or his/her designee may do one or more of the following:

1. Review the record and render a written decision to the parties;
2. Solicit statements from the parties orally or in writing and then render a written decision to the parties;
3. Request that the Administrative Hearing Board clarify the original decision and then render a written decision to the parties;
4. Remand the case to the Administrative Hearing Board for a rehearing; or
5. Take any other action deemed appropriate in order to render a decision on the appeal

A decision will be rendered by CHRO or his/her designee can be appealed to the Executive Vice President for Finance & Operations. Appeals must be submitted to the Executive Vice President for Finance & Operations or his/her designee within 5 business days of the receipt of the decision from the CHRO. Such appeals must be in writing and be delivered to the Office of Executive Vice President for Finance & Operations with a copy to the Title IX Coordinator. The other party will receive written notification when an appeal is filed. If the appeal is not submitted within the allotted time, the decision of the CHRO becomes the final decision.

Upon receipt of a properly filed appeal, the Executive Vice President for Finance & Operations or his/her designee may do one or more of the following:

1. Review the record and render a written decision to the parties;
2. Solicit statements from the parties orally or in writing and then render a written decision to the parties;
3. Request that the Administrative Hearing Board clarify the original decision and then render a written decision to the parties;
4. Remand the case to the Administrative Hearing Board for a rehearing; or
5. Take any other action deemed appropriate in order to render a decision on the appeal

Faculty or staff with grievance rights provided by state law or the faculty manual may initiate any applicable grievances resulting from the final decision in the Employee Title IX Process only after a final decision is entered and any appeals relating to the Employee Title IX Process have been exhausted.

Faculty and staff must follow the grievance steps as outlined in those separate processes. Staff Grievance Steps: http://media.clemson.edu/humanres/policies_procedures/grievance/grievance-policy.pdf

Faculty Grievance Steps: http://www.clemson.edu/faculty-staff/faculty-senate/manual.html?_hstc=7959597.82af9c9a98fa600b1bb630f9cde2cb5f.1512604800065.1512604800066.1512604800067.1&_hssc=7959597.1.1512604800068&_hsfp=528229161