

Interim Procedures for the Resolution of Reports Of Prohibited Conduct Within the Scope of Title IX

Title IX of the Educational Amendments of 1972 prohibits any person in the United States from being discriminated against on the basis of sex in seeking access to any educational program or activity receiving federal financial assistance. The U.S. Department of Education, which enforces Title IX, has long defined the meaning of Title IX's prohibition on sex discrimination broadly to include various forms of sexual harassment and sexual violence that interfere with a student's ability to equally access our educational programs and opportunities.

On May 19, 2020, the U.S. Department of Education issued a Final Rule under Title IX of the Education Amendments of 1972 that¹:

- Defines the meaning of "sexual harassment" (including forms of sex-based violence)
- Addresses how this institution **must** respond to reports of misconduct falling within that definition of sexual harassment, and
- Mandates a grievance process that this institution **must** follow to comply with the law in these specific covered cases before issuing a disciplinary sanction against a person accused of sexual harassment.

In accordance with the final rule, the Law School hereby clarifies the scope of its authority to act under Title IX and the types of "sexual harassment" subject to its Title IX investigation and adjudication process.

To the extent that alleged prohibited conduct falls outside these procedures, or prohibited conduct falling outside these procedures is discovered in the course of investigating prohibited conduct covered by these procedures, the Law School retains authority to investigate and adjudicate the allegations under these procedures other applicable Law School policies or procedures through a separate grievance proceeding.

1. General Rules of Application

1.1 Effective Date

The effective date of these procedures is August 14, 2020. These procedures will apply in all cases where the conduct alleged in a Formal Complaint, as that term is defined in 34 CFR §106.30, occurred on or after August 14, 2020. See also 4.1 below.

1.2 Non-Discrimination in Application

The requirements and protections of these procedures apply equally regardless of sex, sexual orientation, gender identity, gender expression, or other protected classes covered by federal or state law. All requirements and protections are equitably provided to individuals regardless of such status or status as a Complainant, Respondent, or witness. Individuals who wish to file a complaint about the institution's policy or process may contact the Department of Education's Office for Civil Rights using contact information available at <https://ocrcas.ed.gov/contact-ocr>.

1.4 Designation of the parties

¹ See, 85 Fed. Reg. 30026 (May 19, 2020). The full text of the Final Rule and its extensive Preamble are available here: <http://bit.ly/TitleIXReg>

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

2. Jurisdiction and Scope

Under the United States [Department of Education’s Title IX Regulations](#), published May 19, 2020 and effective August 14, 2020, the following procedures will apply. Reports of prohibited conduct meeting the definitions and jurisdictional elements below will follow these procedures.

This procedure applies to reports of prohibited conduct that meet the following criteria:

2.1 Nature of Complaint

A report of conduct on the basis of sex that falls into one of the following categories;

- A complaint of Dating Violence, Domestic Violence, Stalking, or Sexual Assault as defined in Part 3 , below;
- Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies the Complainant equal access² to an education program or activity, including employment; ³ or
- Conduct by an employee conditioning the provision of an aid, benefit, or service of the Law School on the Complainant’s participation in unwelcome sexual conduct.

2.2 Location of Incident

- The incident(s) occurred on Albany Law School’s campus, within the United States;
- The incident(s) occurred in a building under the Law School’s control, such as a classroom outside of the Law School’s main campus, and within the United States;
- The incident(s) were part of one of the Law School’s education programs or activities within the United States, including locations, events, or circumstances over which the Law School exercised substantial control over both the Respondent and the context in which the conduct occurs; or
- The incident occurred through the use of computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of the Law School’s programs and activities over which the Law School has substantial control.

2.3 Identity of the Complainant

These procedures will apply to Complainants, who at the time of filing a Formal Complaint, are participating in or attempting to participate in the education program or activity of the Law School, regardless when the incident occurred. This includes, but is not limited to, current students, (whether applicant, admitted, currently enrolled or on leave of absence; includes alumni or former student attempting to participate in a Law School activity) and current employees (applicant, hired but not yet working or employed).

2.4 Identity of the Respondent

This procedure will apply to Respondents, who at the time of filing a Formal Complaint, are participating in or attempting to participate in the education program or activity of the Law School, regardless when the incident occurred. This includes, but is not limited to, current students, (whether applicant, admitted, currently enrolled or on leave of absence; includes alumni or former student attempting to participate in a Law School activity) and current employees (applicant, hired but not yet working or employed).

3. Prohibited Conduct

3.1 Sexual Harassment

Conduct committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved which is one of the following:

- A. Quid Pro Quo: When a Law School employee conditions the provision of a benefit or service of the Law School on an individual's participation in unwelcome sexual conduct; and/or
- B. Hostile Environment: Unwelcome conduct determined by a reasonable person to be so severe, and pervasive, and objectively offensive, that it effectively denies a person equal access to an educational program or activity of the Law School.

3.2 Sexual Assault

Sexual Assault includes both forcible and non-forcible sexual offenses:

- Sexual offenses, Forcible: Any sexual act directed against another person without the consent of the Complainant, including instances in which the Complainant is incapable of giving consent.
 - A. Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the Complainant.
 - B. Oral or anal sexual intercourse with another person, forcibly, and/or against that person's will (non-consensual), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
 - C. The use of an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, forcibly, and/or against that person's will (non-consensually) or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
 - D. The touching of the private body parts of another person (buttocks, groin, breasts), for the purpose of sexual gratification, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- Sex Offenses, Non-forcible, includes any of the following:
 - A. Incest: Non-forcible sexual intercourse between persons who are related to each other, within the degrees wherein marriage is prohibited by New York Law.
 - B. Statutory Rape: Non-forcible sexual intercourse, with a person who is under the statutory age of consent of 18 years of age.

3.3 Dating Violence

Violence, on the basis of sex, committed by a person, who is in or has been in a social relationship of a romantic or intimate nature with the Complainant. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.

3.4 Domestic Violence

Violence, on the basis of sex, committed by a current or former spouse or intimate partner of the Complainant, by a person with whom the Complainant shares a child in common, or by a person who is cohabitating with, or has cohabitated with the Complainant as a spouse or intimate partner, or by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of New York, or by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of New York or the state in which the conduct occurred.

3.5 Sex-Based Stalking

Engaging in a course of conduct on the basis of sex directed at a specific person, that would cause a reasonable person to fear for the person's safety, the safety of others, or suffer substantial emotional distress.

- For the purposes of this definition, "course of conduct" means two or more acts, including, but not limited to acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
- Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

4. Time limits to File Formal Complaints

4.1 Formal Complaint

For the purposes of these Title IX Procedures, "Formal Complaint" means a document – including an electronic submission – filed by a Complainant with a signature or other indication that the Complainant is the person filing the Formal Complaint, or signed by the Title IX Coordinator, alleging prohibited conduct against a Respondent within Law School's education program or activity and requesting initiation of these procedures to investigate the allegation of prohibited conduct. A Formal Complaint concerning events occurring on or after August 14, 2020 may be filed at any time.

4.2 Eligibility to File a Formal Complaint

Complainants are only able to file a Formal Complaint under this Policy if they meet the conditions of Section 2.3 above..

Similarly, the Law School will consider complaints under these procedures only if the Respondent meets the conditions of Section 2.4 above.

To promote timely and effective review, the Law School strongly encourages Complainants and other persons with knowledge of possible violations of this Policy to make reports as soon as possible. A delay in reporting may affect the Law School's ability to gather relevant and reliable information, contact witnesses, investigate thoroughly, and respond meaningfully. It may also affect the Law School's ability to take disciplinary action against a student or employee who has engaged in prohibited conduct.

While prompt reporting is encouraged, the Law School will consider as timely any formal complaint that is filed under these procedures as long as the Respondent is a "student," as defined by these procedures (e.g., has not graduated or permanently left the Law School).

If the Complainant and/or Respondent is no longer a student or employee at the time of the formal complaint and the Law School is, thus, unable to pursue resolution under these procedures, the Law School may, as appropriate and reasonably available, provide support for the parties and, as feasible, taking appropriate steps to end any prohibited conduct, prevent its recurrence, and address its effects.

5. The Response to a Report of Prohibited Conduct

5.1 Initial Assessment

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

5.1.1 Where the Complainant's Identity Is Known

Where the identity of the Complainant is known, the Title IX Coordinator will ensure that the Complainant receives a written explanation of all available resources and options and is offered the opportunity to meet promptly with the Title IX Coordinator to discuss those resources and options.

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

- Assess the Complainant's safety and well-being and offer the Law School's support and assistance through available resources;
- Inform the Complainant that the Title IX Coordinator will maintain the Complainant's privacy to the greatest extent possible and disclose information only as necessary pursuant to these procedures;
- Inform the Complainant of their right to seek medical treatment (including a sexual assault forensic examination) and explain the importance of obtaining evidence and preserving forensic and other evidence;
- Inform the Complainant of their right to contact law enforcement, be assisted by Law School officials in contacting law enforcement, or decline to contact law enforcement, and their right to seek a protective order;
- Inform the Complainant that the criminal justice system uses different standards of proof and evidence than these procedures and that any questions about whether the reported prohibited conduct constitutes a penal law violation should be addressed by law enforcement;
- Inform the Complainant about Law School and community resources, including counseling, health, and mental health services; victim advocacy; procedural advocacy; legal resources; visa and immigration assistance; student financial aid; and other resources both on campus and in the community, and how to request or contact such resources;
- Inform the Complainant of the right to seek appropriate and available Supportive Measures and how to request such measures (see "11. SUPPORTIVE MEASURES" below);
- Inform the Complainant of the right to file a Formal Complaint and seek resolution under these procedures; provide the Complainant with an overview of these procedures, including Informal Resolution (where appropriate); and inform the Complainant of the right to withdraw a Formal Complaint at any time and to decline or discontinue resolution under these procedures at any time, but that declining to participate in an investigation and/or the adjudicatory process under these procedures may limit the Law School's ability to investigate meaningfully and respond to a report of prohibited conduct;
- As possible and appropriate, ascertain the Complainant's preference for pursuing formal resolution, Informal Resolution, or neither under these procedures, and discuss with the Complainant any concerns or barriers to participating in any investigation and resolution process under these procedures;
- Explain that the Law School prohibits retaliation, that retaliation constitutes prohibited conduct under the Law School's Non-Title IX Procedures, and that the Law School will take appropriate action in response to any act of retaliation;
- Inform the Complainant of their rights afforded under the *Student Bill of Rights*; and
- Communicate with appropriate Law School officials to determine whether the report triggers any Clery Act obligations, including the entry of the report in the daily crime log and/or issuance of a timely warning, and take steps to meet those obligations.

5.1.2 Where the Complainant's Identity Is Unknown

Where a report is filed but the identity of the Complainant is unknown, the Title IX Coordinator will assess the nature and circumstances of the report, including whether it provides information that identifies the potential

Complainant, the potential responding party, any witnesses, and/or any other third party with knowledge of the reported incident, and take reasonable and appropriate steps to respond to the report of prohibited conduct consistent with applicable federal and state laws and these procedures.

5.2 The Law School's Actions Following an Initial Assessment

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

5.2.1 Where the Complainant Seeks Resolution Under These Procedures

In any case where the Complainant reports prohibited conduct and requests resolution under these procedures, the Complainant must provide the Title IX Coordinator a written, signed complaint describing the facts alleged. Complainants are only able to file a Formal Complaint under these procedures if they are currently participating in, or attempting to participate in, the education programs or activities of the Law School (See, Section 2.3).

5.2.2 Where the Complainant Requests That No Formal Complaint Be Pursued Under These Procedures

The Law School strongly supports the Complainant's decision not to pursue a Formal Complaint under these procedures and desire for anonymity.

Where the Complainant does not wish to pursue a Formal Complaint under these procedures, the Law School will honor the Complainant's wishes unless doing so would not adequately mitigate the risk of harm to the Complainant or other members of the Law School community or doing so impacts the Law School's ability to provide a safe and non-discriminatory environment for all members of the Law School community, including the Complainant.

The Title IX Coordinator will consider the following factors, among others, when determining whether to honor the Complainant's wish that no resolution be pursued under these procedures:

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

Regardless of whether the Complainant chooses to file Formal Complaint or participate in a formal grievance process pursuant to the Law School's Title IX grievance process and procedures, the Title IX Coordinator will assist the parties with reasonable and available accommodations, which may include academic, housing, transportation, employment, and other accommodations. (See, "11. SUPPORTIVE MEASURES" below). Supportive Measures provided to the Complainant may not unreasonably burden the responding party.

Where no Formal Complaint has been filed and a Supportive Measure impacts the responding party, the responding party will be provided with written notice of the report, which includes, as known, the date, time, and location of the alleged prohibited conduct and the underlying factual allegations, including the identity of the Complainant. Therefore, certain Supportive Measures may not be available if the Complainant wishes to maintain anonymity.

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

5.2.3 Law School Determination That the Complainant's Request(s) Can Be Honored

Where the Title IX Coordinator determines that the Law School can honor the Complainant's request that no Formal Complaint be pursued under these procedures, the Law School may nevertheless take other appropriate steps designed to eliminate the reported prohibited conduct, prevent its recurrence, and address its effects on the Complainant and the Law School community. Those steps may include offering the Complainant reasonable and available accommodations, conducting targeted prevention and awareness training, and/or providing or imposing other remedies tailored to the circumstances.

The Complainant may later also choose to pursue a Formal Complaint under these procedures.

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

5.2.4 Law School Determination That the Complainant's Request(s) Cannot Be Honored

Where the Title IX Coordinator determines that the Law School cannot honor the Complainant's request that no Formal Complaint be pursued under these procedures, the Title IX Coordinator will promptly initiate the resolution process under these procedures by making a signed, written Formal Complaint on behalf of the Law School. The Formal Complaint will name the Complainant; thus, the Complainant's identity will be revealed to the responding party.

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

The Complainant is not required to participate in any proceedings that follow but will receive all notices issued under these procedures. However, if the Complainant declines to participate in an investigation and/or the adjudicative process under these procedures, the Law School's ability to investigate meaningfully and respond to a report of prohibited conduct may be limited.

6. Notice to the Parties of Law School Actions

The Title IX Coordinator will promptly inform the Complainant of any actions undertaken by the Law School that will directly impact the Complainant, including the filing of a Formal Complaint.

The Title IX Coordinator will promptly inform the responding party of any actions undertaken by the Law School that will directly impact the responding party, including the filing of a Formal Complaint or the imposition of Supportive Measures that would directly impact the responding party, and provide an opportunity for the responding party to respond to such action(s). (See "11. SUPPORTIVE MEASURES" below). Supportive Measures become effective when notice of the Supportive Measure is provided.

7. Advisors

At all stages under these procedures, individuals participating as Complainant or Respondent in this process may be accompanied by an Advisor of Choice to any meeting or hearing to which they are required or are eligible to attend.

Advisors may be any person, including an attorney.

Except where explicitly stated by these procedures, Advisors of Choice may not speak in lieu of the party, or otherwise interfere with meetings or proceedings.

Throughout the proceedings, advisors may help the party prepare written submissions. During hearings, the Advisor of Choice may confer with the party. Advisors will also conduct cross examination of the opposing party and witnesses.

By accepting the role of Advisor of Choice, the advisor agrees to comply with the rules and processes set forth in these procedures, including rules regarding process privacy.

The Law School will not interfere with the parties' rights to have an Advisor of Choice and fully expects advisors to adhere voluntarily to the Law School's Title IX grievance process and procedures. In extreme cases, where either the Title IX Coordinator or Decision Maker determines that an advisor's conduct undermines the integrity of the Title IX grievance process and procedures, the advisor will be prohibited from continuing to serve as advisor in that case. The affected party will be permitted to obtain a substitute advisor. If a party does not have an advisor present at the live hearing, the recipient must provide without fee or charge to that party, an advisor of the recipient's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party.

8. Written Submissions

Where a form is available for a written submission, the party must use the form for the submission. Where required by these procedures, the party must sign the written submission.

9. Preservation of Information and Tangible Material

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

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

10. Obligation to Provide Truthful Information

At all stages of the process, all Albany Law School community members are expected to provide truthful information.

11. Supportive Measures

Following a report of prohibited conduct, the Complainant and Respondent will be provided information about a range of resources, support services, and measures to protect the safety and well-being of the parties and to restore or preserve equal access to the Law School's education programs or activities. Some such measures are Supportive Measures, which are utilized pending resolution of a case under these procedures. Supportive Measures are non-disciplinary and non-punitive and may not unreasonably burden a responding party in the absence of a finding of responsibility for prohibited conduct, as defined in these procedures.

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

Supportive Measures are available regardless of whether a Formal Complaint has been filed under these procedures and whether the Complainant chooses to report the prohibited conduct to law enforcement.

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

Violations of Supportive Measures that are directives by a Law School official constitute prohibited conduct under the Law School's Student Code of Conduct and Employee Handbook.

11.1 Examples of Supportive Measures

Potential Supportive Measures include but are not limited to:

- Assistance obtaining access to counseling, advocacy, or medical services;
- Assistance obtaining access to academic support and requesting academic accommodations;
- Changes in class schedules;
- Assistance requesting changes in work schedules, job assignments, or other work accommodations;
- Changes in campus housing;
- Safety escorts;
- Leaves of absence;
- Restrictions on contact between the parties (“No-contact” orders)

11.2 Issuance of Supportive Measures

The Title IX Coordinator is responsible for issuing Supportive Measures.

Supportive Measures will be designed in a fair manner and narrowly tailored to minimize to the extent possible any restrictions on those affected. Supportive Measures may not unreasonably burden a responding party in the absence of a finding of responsibility for prohibited conduct, as defined in these procedures.

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

Where no Formal Complaint has been filed and a Supportive Measure impacts the responding party, the responding party will be provided with written notice of the report, which includes, as known, the date, time, and location of the alleged prohibited conduct and the underlying factual allegations, including the identity of the Complainant. Therefore, certain Supportive Measures may not be available if the Complainant wishes to maintain anonymity.

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

11.3 Requested Review of Title IX Coordinator’s Decisions Regarding Supportive Measures

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

Both parties may petition the reviewing administrator², in writing to review the Title IX Coordinator’s decision whether to issue, modify, or remove Supportive Measures. A party may seek such review only if the Supportive Measure directly impacts that party. A party seeks review by submitting a letter explaining the reason for their request for review and including any written evidence in support of such request. The materials should be submitted to the Title IX Coordinator, who will forward all materials to the reviewing administrator. The Title IX Coordinator will also inform the non-petitioning party that a request has been filed and provide a copy of the request to that party.

If, based upon the request, the reviewing administrator, is considering issuing, modifying, or removing a Supportive Measure, the reviewing administrator, will invite the non-petitioning party and the Title IX Coordinator to submit

² Where the supportive measure impacts a student, the review will be conducted by the Associate Dean of Student Affairs. Where the supportive measure impacts an employee, the review will be conducted by the Human Resources Director. Where the supportive measure impacts a member of the faculty, the review will be conducted by the Dean.

responses. The reviewing administrator, will establish a reasonable timeline for handling the matter, including deadlines for submissions.

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

The reviewing administrator will provide a written decision to the parties and the Title IX Coordinator. The decision of the reviewing administrator is final; there is no right to appeal.

12. Emergency Removals of a Student Pending Resolution

The Law School retains the authority to remove a Respondent from the Law School's program or activity on an emergency basis, where the Law School(1) undertakes an individualized safety and risk analysis and (2) determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of covered sexual harassment justifies a removal.

If it is determined that such removal is necessary, the Respondent will be provided notice and an opportunity to challenge the decision immediately following the removal, in accordance with section 12.1, below.

12.2 Requested Review of the Title IX Coordinator's Decision Regarding Emergency Removal

The Responding Party may petition the reviewing administrator in writing to review the Title IX Coordinators decision to impose an emergency removal. The Respondent may seek review by submitting a letter explaining the reason for their request for review and including any written evidence in support of such request. The materials should be submitted to the Title IX Coordinator, who will forward all materials to the reviewing administrator. The Title IX Coordinator will also inform the non-petitioning party that a request has been filed and provide a copy of the request to that party.

If, based upon the request, the reviewing administrator is considering modifying, or lifting the emergency removal, the reviewing administrator will invite the non-petitioning party and the Title IX Coordinator to submit responses. The reviewing administrator will establish a reasonable timeline for handling the matter, including deadlines for submissions.

If the reviewing administrator determines that the Title IX Coordinator's decision should be set aside, the reviewing administrator will instruct the Title IX Coordinator to vacate the prior decision. At that time, the Title IX Coordinator may impose alternate reasonable and appropriate emergency restrictions or supportive measures. The reviewing administrator may, but is not required to, provide the Title IX Coordinator with guidance regarding appropriate alternate emergency restrictions or supportive measures.

The reviewing administrator will provide a written decision to the parties and the Title IX Coordinator. The decision of the reviewing administrator is final.

13. Administrative Leave of Non-Student Respondent

The Law School retains the authority to place a non-student, employee Respondent on administrative leave during the Title IX Grievance Process, consistent with Employee or Faculty Handbook.

14. Pending Criminal Investigations

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

15. Initiating The Grievance Process: Filing a Formal Complaint

The timeframe for the Title IX Grievance Process begins with the filing of a Formal Complaint. The Grievance Process will be concluded within a reasonably prompt manner, ideally ninety (90) calendar days³ after the filing of the Formal Complaint, provided that the Process may be extended for a good reason, including but not limited to the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities. The procedure for applying for extensions is described below.

To file a Formal Complaint, a Complainant must provide the Title IX Coordinator a written, signed complaint describing the facts alleged. 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 Albany Law School, including as an employee.

If a Complainant does not wish to make a Formal Complaint, the Title IX Coordinator may determine a Formal Complaint is necessary. Albany Law School will inform the Complainant of this decision in writing, and the Complainant need not participate in the process further but will receive all notices issued under this Policy and Process.

Nothing in this Title IX Grievance Policy or other Law School policies prevents a Complainant from seeking the assistance of state or local law enforcement alongside the appropriate on-campus process.

15.1 Contents of Notice

The Notice of Allegations will include the following:

- Notice of the Law Schools Title IX grievance process and procedures;
- Notice of the allegations potentially constituting prohibited conduct, and sufficient details known at the time the Notice is issued, such as the identities of the parties involved in the incident, if known, including the Complainant; the conduct allegedly constituting covered sexual harassment; and the date and location of the alleged incident, if known.
- A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
- A statement that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney, as required under 34 C.F.R. § 106.45(b)(5)(iv);
- A statement that before the conclusion of the investigation, the parties may inspect and review evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including the evidence upon which the institution 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, as required under 34 C.F.R. § 106.45(b)(5)(vi);
- If a party declines to participate in the investigation, the party will forfeit the opportunity at the hearing offer evidence, including testimony

15.2 Ongoing Notice

³ The Final Rule does not require a minimum or maximum number of days, but the institution's grievance process must articulate the time frame for the process by referencing a number of days or some other measurable unit of time. This timeframe need not be sixty days, but can be if the recipient deems that time frame appropriate and indicates that timeframe within its policies. 85 Fed. Reg. 30026, 30270 (May 19, 2020). The Department cautions that "no avenue for handling a Formal Complaint of sexual harassment is subject to an open-ended time frame." Id. at 30269. For more information, see Joint Guidance on Federal Title IX Regulations, "[Reasonably Prompt Timeframes](#)" and 34 CFR § 106.45(b)(1)(v).

If, in the course of an investigation, the institution decides to investigate allegations about the Complainant or Respondent that are not included in the Notice of Allegations and are otherwise prohibited by these procedures, the institution will notify the parties whose identities are known of the additional allegations by their institutional email accounts or other reasonable means.

The parties will be provided sufficient time to review the additional allegations to prepare a response before any initial interview regarding those additional charges.

15.3 Notice to Parties Upon the Issuance of a Formal Complaint

The Title IX Coordinator will draft and provide the Notice of Allegations to any party to the allegations of prohibited conduct. Such notice will occur as soon as practicable after the institution receives a Formal Complaint of the allegations, if there are no extenuating circumstances.

The parties will be notified by their institutional email accounts if they are a student or employee, and by other reasonable means if they are neither.

The institution will provide sufficient time for the parties to review the Notice of Allegations and prepare a response before any initial interview.

The Title IX Coordinator may determine that the Formal Complaint must be dismissed on the mandatory grounds identified in section 16 of these procedures, and will issue a Notice of Dismissal. If such a determination is made, any party to the allegations of prohibited conduct identified in the Formal Complaint will receive the Notice of Dismissal in conjunction with, or in separate correspondence after, the Notice of Allegations.

16. Dismissal of A Formal Complaint

16.1 Mandatory Dismissal of a Formal Complaint

If any one of these elements set forth in section 2 of these procedures are not met, the Title IX Coordinator will notify the parties that the Formal Complaint is being dismissed for the purposes of these procedures.

Each party may appeal this dismissal using the procedure outlined in “Appeals,” below.

16.2 Discretionary Dismissal of a Formal Complaint

The Title IX Coordinator may dismiss a Formal Complaint brought under these procedures, or any specific allegations raised within that Formal Complaint, at any time during the investigation or hearing, if:

- A Complainant notifies the Title IX Coordinator in writing that they would like to withdraw the Formal Complaint or any allegations raised in the Formal Complaint;
- The Respondent is no longer enrolled or employed by the Law School; or,
- If specific circumstances prevent the Law School from gathering evidence sufficient to reach a determination regarding the Formal Complaint or allegations within the Formal Complaint.

Any party may appeal a dismissal determination using the process set forth in “Appeals,” below.

16.3 Notice of Dismissal

Upon reaching a decision that the Formal Complaint will be dismissed, the institution will promptly send written notice of the dismissal of the Formal Complaint or any specific allegation within the Formal Complaint, and the reason for the dismissal, simultaneously to the parties through their institutional email accounts. It is the responsibility of parties to maintain and regularly check their email accounts.

16.4 Notice of Removal

Upon dismissal of a Formal Complaint under these procedures, the Law School retains discretion to utilize other applicable Law School policies or procedures to determine if a violation of any other Law School Policy has occurred. If so, the Law School will promptly send written notice of the dismissal of the Formal Complaint under these procedures and removal of the allegations for further action under the appropriate Law School policy or procedure.

17. Consolidation of Reports, Formal Complaints, and Hearings Under These Procedures

Generally, at the discretion of the Title IX Coordinator, multiple reports or Formal Complaints under these procedures arising out of the same factual circumstances may be joined in one investigation when:

- There is more than one Complainant or Respondent;
- Where a cross complaint has been filed by a Respondent against a Complainant.

In determining whether to consolidate multiple reports or Formal Complaints the Title IX Coordinator will consider whether consolidation is likely to result in reliable and more efficient outcomes without causing prejudice to a party or parties or confusion for the fact finders.

Where a matter is consolidated for investigation, the investigator will issue a single investigative record and report and the matter will be adjudicated in one hearing. All parties to a consolidated complaint will receive the same written determination.

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

If the alleged conduct, if true, includes conduct that would constitute prohibited conduct under these procedures and conduct that would cover prohibited conduct under other Law School policy or procedures, this Grievance Process will be applied in the investigation and adjudication of all of the allegations.

Prior to completion of the investigative report, the recipient must send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report. The recipient must make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination;

18. Informal Resolution of a Formal Complaint

At any time after a Formal Complaint has been filed and before a hearing commences, the parties may seek to resolve a report of prohibited conduct through Informal Resolution, an administrative process. Participation in Informal Resolution is entirely voluntary; the Title IX Coordinator will neither pressure nor compel either party to participate in the process or to agree to any specific terms.

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

Informal Resolution will not require, but may permit if agreed to by both parties, face-to-face meetings, between the Complainant and the responding party.

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

Before the Informal Resolution process commences, both the Complainant and the responding party must agree to explore Informal Resolution as a potential means of resolution.

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

If the process is terminated for any reason, the matter will be resolved pursuant to the Formal Complaint resolution process under these procedures.

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

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

Both parties must agree to the terms before an Informal Resolution agreement becomes effective. At any time before a written agreement is effective, the Complainant or the responding party may withdraw from the Informal Resolution process, and the Title IX Coordinator may also, at their discretion, terminate the process. The Title IX Coordinator will promptly notify the parties, in writing, of a termination of the Informal Resolution process and the Formal Complaint will be investigated and adjudicated pursuant to these procedures.

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

If both parties are satisfied with the Title IX Coordinator's recommendation, the matter will be resolved with a written agreement. The Title IX Coordinator will provide each party, separately, with a copy of the proposed agreement for the party to review, sign, and return.

Once the parties has returned the signed agreement to the Title IX Coordinator, the terms of the agreement will become effective and the Title IX Coordinator will promptly notify both parties in writing that the agreement is final.

Once the agreement is effective, the parties may not appeal the agreement. The parties are expected to honor and comply with the terms of the Informal Resolution. Noncompliance may be subject to proceedings under the applicable Law School policy.

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

19. The Parties' Participation in the Investigation and Hearing

Both the Complainant and the responding party may decline to participate in the investigation and/or hearing. However, the Law School may continue, without a party's participation, reaching findings and issuing sanctions.

The Law School will provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings with a party, with sufficient time for the party to prepare to participate.

The Law School will not intentionally schedule meetings or hearings on dates where the Advisors of Choice for all parties are not available, provided that the Advisor acts reasonably in providing available dates and work collegially to find dates and times that meet all schedules.

The Law School's obligations to investigate and adjudicate in a prompt timeframe under Title IX and other Law School policies apply to matters governed under these procedures, and the Law School, though it cannot agree to extensive delays solely to accommodate the schedule of an Advisor of Choice, will permit reasonable requests. The determination of what is reasonable shall be made by the Title IX Coordinator or designee. The Law School will not be obligated to delay a meeting or hearing under this process more than five (5) days due to the unavailability of an Advisor of Choice, and may offer the party the opportunity to obtain a different Advisor of Choice.

19.1

If a party declines to participate in the investigation, the party will forfeit the opportunity at the hearing offer evidence, including testimony.

Nonetheless, if a party who has so declined to participate in investigative interviews later seeks to participate in a hearing, upon a finding that there was a compelling reason for the nonparticipation, the Decision Maker, in consultation with the Title IX Coordinator, may permit the party to participate. If the Decision Maker permits the party to participate in the hearing, the Hearing Chair will first reschedule or adjourn the hearing for the investigator to interview the party and, as necessary, conduct any follow-up investigation and supplement and revise the investigative record and report. The Decision Maker will also re-open the pre-hearing submission process, if appropriate, so that the parties may respond to the new information.

19.2 Declining to Attend or Participate in the Hearing

Neither party is required to attend a hearing for the hearing to proceed. If, despite being notified of the date, time, and location of the hearing, either party is not in attendance, the Law School may still proceed with the live hearing in the absence of a party, and may reach a determination of responsibility in their absence, including through any evidence gathered that does not constitute a "statement" by that party.⁴

If a party does not submit to cross-examination, the decision-maker cannot rely on any prior statements made by that party in reaching a determination regarding responsibility, but may reach a determination regarding responsibility based on evidence that does not constitute a "statement" by that party.⁵

The decision-maker cannot draw an inference about the determination regarding responsibility based solely on a party's absence from the live hearing or refusal to answer cross examination or other questions.⁶

20. Investigation of a Formal Complaint

20.1 Overview of Investigations of a Formal Complaint

The investigation is designed to be timely, thorough, and impartial and to provide for a fair and reliable gathering of the facts. All individuals involved in the investigation, including the Complainant, the Respondent, and any third-party witnesses, will be treated with sensitivity and respect.

The investigation will generally include individual interviews of the Complainant, the Respondent, and relevant witnesses. Upon completion of the investigation, the investigator will prepare a final investigative record and an

⁴ 85 Fed. Reg. 30026, 30361 (May 19, 2020).

⁵ A verbal or written statement constituting part or all of the sexual harassment itself is not a "prior statement" that must be excluded if the maker of the statement does not submit to cross-examination about that statement. In other words, a prior statement would not include a document, audio recording, audiovisual reading, and digital media, including but not limited to text messages, emails, and social media postings, that constitute the conduct alleged to have been the act of sexual harassment under the Formal Complaint. See, OCR Blog (May 22, 2020), available at <https://www2.ed.gov/about/offices/list/ocr/blog/20200522.html>

⁶ See 34 C.F.R. §106.45(b)(6)(i).

investigative report. The investigative record is a compilation of all evidence directly related to the allegations in the Formal Complaint and may include statements by the parties and witnesses as well as other evidence gathered by the investigator.

The investigator must create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to a hearing (if a hearing is required under this section or otherwise provided) or other time of determination regarding responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.

The investigative report will explain the scope of the investigation and will fairly summarize the relevant evidence gathered. The investigator does not make any findings or recommendations as to responsibility. In the event of a hearing, the final investigative record and report become part of the hearing record.

The Complainant and the Respondent will have an equal opportunity to participate in the investigation, including an equal opportunity to be heard, submit evidence, and suggest witnesses who may have relevant information. Specifically, during the investigation, each party will have the opportunity to:

- Be interviewed by the investigator;
- Review their own interview statements prior to the statements being distributed to the other party and included in a draft investigative record;
- Provide evidence to the investigator;
- Suggest witnesses to be interviewed by the investigator;
- Propose questions to be asked of witnesses and the other party; and
- Review a draft investigative record and comment on it, in writing, before the investigator finalizes the record and prepares an investigative report;
- Review the investigative report, and provide comment on it, prior to the hearing.

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

The Law School and not the parties, has the burden of proof and the burden of gathering evidence, i.e. the responsibility of showing a violation of these procedures has occurred. This burden does not rest with either party, and either party may decide not to share their account of what occurred or may decide not to participate in an investigation or hearing. This does not shift the burden of proof away from the Law School and does not indicate responsibility.

20.2 Time Frame of and Time Limitations During the Investigation

The Title IX Coordinator or an investigator designated by the Title IX Coordinator will perform an investigation under a reasonably prompt timeframe of the conduct alleged to constitute covered sexual harassment after issuing the Notice of Allegations.

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

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

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

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

20.3 Investigative Interview Process

The investigator will gather information from the Complainant, the Respondent, and other individuals who have relevant information.

The parties will have the opportunity to request in writing witnesses they would like the investigator to interview and questions and topics they would like the investigator to ask witnesses, themselves, and the other party.

The investigator has the discretion to determine whether any proffered witnesses have information that is directly related to the allegations in the Formal Complaint, and, accordingly, the investigator will determine which witnesses to interview.

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

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

Witnesses will receive copies of audio recordings of their own interviews.

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

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

In the event of a failure rendering an audio recording of an interview inaudible in whole or in part, the investigator will either reconstruct the interview with input from the interviewee or re-conduct the interview, as the investigator deems necessary. The reconstructed interview statement will become part of the investigative record and will be so identified as a reconstruction.

20.4 Evidentiary Materials

The investigator will gather available relevant evidentiary materials and evidence that is directly related to the allegations in the Formal Complaint submitted by the parties, including physical evidence, documents, communications between the parties, and electronic records and media as appropriate.

The parties will have the opportunity to request in writing the evidentiary materials they would like the investigator to seek to obtain.

The investigator has the discretion to determine whether the requested evidentiary materials are directly related to the allegations in the Formal Complaint, and, accordingly the investigator will determine what evidentiary materials to seek to obtain.

The Final Rule requires that the Law School allow parties to submit evidence that is directly related to the allegations and is (1) provided by expert witnesses, (2) character evidence, and (3) polygraph evidence.

20.5 Relevant Evidence and Questions

“Relevant” evidence and questions refer to any questions and evidence that tends to make an allegation of sexual harassment more or less likely to be true.

“Relevant” evidence and questions do not include the following types of evidence and questions, which are deemed “irrelevant” at all stages of the these procedures:

1. Evidence and questions about the Complainant’s sexual predisposition or prior sexual behavior unless:

- a. They are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or
 - b. They concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent. 34 C.F.R. § 106.45(6)(i).
2. Evidence and questions that constitute, or seek disclosure of, information protected under a legally-recognized privilege.
3. Any party's medical, psychological, and similar records unless the party has given voluntary, written consent. 85 Fed. Reg. 30026, 30294 (May 19, 2020).

The investigator will also exclude and, as necessary, redact content that is impermissible under applicable law.

Exclusions and redactions will be noted and thereby become part of the investigative record.

Excluded or redacted content not included in the investigative record will not be considered by the Hearing Panel unless a determination upon request of a party that the exclusion or redaction was erroneous is made by the Hearing panel.

20.6 Draft Investigative Record and the Parties' Review

Prior to the completion of the investigation, the parties will have an equal opportunity to inspect and review the evidence obtained through the investigation. The purpose of the inspection and review process is to allow each party the equal opportunity to meaningfully respond to the evidence prior to conclusion of the investigation.

Evidence that will be available for inspection and review by the parties will be any evidence that is directly related to the allegations raised in the Formal Complaint. It will include any:

4. Evidence that is relevant, even if that evidence does not end up being relied upon by the Law School in making a determination regarding responsibility;
5. Inculpatory or exculpatory evidence (i.e. evidence that tends to prove or disprove the allegations) that is directly related to the allegations, whether obtained from a party or other source.

All parties must submit any evidence they would like the investigator to consider prior to when the parties' time to inspect and review evidence begins.⁷

The Law School will send the evidence made available for each party and each party's advisor, if any, to inspect and review [through an electronic format or a hard copy.] The Law School is not under an obligation to use any specific process or technology to provide the evidence and shall have the sole discretion in terms of determining format and any restrictions or limitations on access.

The parties will have ten (10) calendar days to inspect and review the evidence and submit a written response by email to the investigator. The investigator will consider the parties' written responses before completing the Investigative Report.

The Law School will provide copies of the parties' written responses to the investigator to all parties and their advisors, if any.⁸

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

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

⁷ See, 85 Fed. Reg. 30026, 30307 (May 19, 2020).

⁸ See, 85 Fed. Reg. 30026, 30307 (May 19, 2020).

Delays simply to prolong the process will not be permitted and failure to make submissions within ten (10) business days or any approved extensions will result in a forfeiture of the right to do so later.

Any evidence subject to inspection and review will be available at any hearing, including for purposes of cross-examination.

20.7 Inclusion of Evidence Not Directly Related to the Allegations

Evidence obtained in the investigation that is determined in the reasoned judgment of the investigator not to be directly related to the allegations in the Formal Complaint will be included in the appendices to the investigative report. This evidence will not be provided to the Decision Maker, but will be retained for inspection if appropriate during an appellate review.

20.8 Final Investigative Record and Report

After review and consideration of the parties' comments to the draft investigative record, the investigator will issue a final investigative record and an investigative report.

20.8.1. Content of the Final Investigative Record and Investigative Report

The investigative record is a compilation of all of the evidence directly related to the allegations in the Formal Complaint, and may include investigative interviews, evidentiary materials, and expert testimony and materials, if any.

The investigative report will explain the scope of the investigation and summarize the relevant evidence gathered during the investigation. At their discretion, the investigator may identify contested and uncontested facts, highlight inconsistencies, and address relevancy of evidence. The investigative report is not intended to catalog all evidence obtained by the investigator, but only to provide a fair summary of that evidence.

The investigator may redact irrelevant information from the investigative report when that information is contained in documents or evidence that is/are otherwise relevant.⁹

The investigative report is not evidence.

20.8.2. Review of the Final Investigative Record and Investigative Report

Prior to completion of the investigative report, the Law School must send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report. The recipient must make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination

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

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

Delays simply to prolong the process will not be permitted and failure to make submissions within ten (10) business days or any approved extensions will result in a forfeiture of the right to do so later.

⁹ See, 85 Fed. Reg. 30026, 30304 (May 19, 2020).

The Law School must create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to a hearing (if a hearing is required under this section or otherwise provided) or other time of determination regarding responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.

21. Hearings

21.1 Overview of Hearing Process

Findings of responsibility and determinations regarding sanctions and remedies are made through a live hearing process conducted by a three-person panel of decision makers, with one member of the panel designated as the Hearing Chair. The hearing is intended to provide the parties with a fair opportunity to present relevant information to the Hearing Panel and enable the Hearing Panel to make informed decisions regarding responsibility and sanctions/remedies. Live hearings are not public.

The live hearing may be conducted with all parties physically present in the same geographic location, or, at Law School's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually via a remote conferencing platform, such as Zoom. This technology will enable participants simultaneously to see and hear each other. At its discretion, the Law School may delay or adjourn a hearing based on technological errors not within a party's control.

All proceedings will be recorded, and a transcript of the proceedings will be made. That recording or transcript will be made available to the parties for inspection and review.

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

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

Questioning of the parties and witnesses will be conducted by the Hearing Chair and Panel. Cross examination of the opposing party(ies) and witnesses will be conducted by the advisors for each party.

Throughout the hearing, the parties may never directly address each other.

21.2 Presumption of Non-Responsibility and Standard of Proof

The responding party will be presumed "not responsible" unless, and until, a majority of the Hearing Panel determines the responding party is responsible.

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

21.3 The Hearing Panel and Chair

The Hearing Panel will be comprised members of at least two members the Law School's Harassment Committee. The third member of the Panel, who will also serve as chair will either be a member of the Harassment Committee, or an external adjudicator. No member of the hearing panel will also have served as the Title IX Coordinator, Title IX investigator, or advisor to any party in the case, nor may any member of the hearing body serve on the appeals

body in the case. No member of the hearing panel will have a conflict of interest or bias in favor of or against Complainants or Respondents generally, or in favor or against the parties to the particular case.

The Hearing Chair and Hearing Panel members will receive annual training as required by law and regulation, including, but not limited to, how to serve impartially, issues of relevance, including how to apply the rape shield protections provided for Complainants, and any technology to be used at the hearing.¹⁰

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

The Hearing Chair will draft the Hearing Panel decision, reflecting the Hearing Panel's findings of fact and rationales for their determinations regarding both responsibility and sanctions and remedies. The Hearing Chair will obtain the Hearing Panel's approval before issuing a written decision.

21.4 Notice of Hearing

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

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

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

Upon receipt of written notice of the Hearing Chair and Hearing Panel members¹¹, if a party believes that they have a potential conflict of interest with either a Hearing Panel member or Hearing Chair, the party should notify the Title IX Coordinator, who will forward the notification to the Hearing Chair. The notification must be in writing, made within two (2) business days of the notice, and include facts substantiating the claim of conflict. The Hearing Chair has discretion whether to remove a member of the Hearing Panel or to recuse themselves.

21.5 Request to Reschedule Hearing

Either party may request to have a hearing rescheduled. Absent extenuating circumstances, requests to reschedule must be submitted at least three (3) business days prior to the hearing. A request to reschedule a hearing must be supported by a compelling reason for the delay. Given the number of individuals involved in a hearing, and the

¹⁰ 34 CFR §106.45(b)(1)(iii) A recipient must ensure that Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, receive training on the definition of sexual harassment in § 106.30, the scope of the recipient's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudice of the facts at issue, conflicts of interest, and bias. A recipient must ensure that decision-makers receive training on any technology to be used at a live 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 relevant, as set forth in paragraph (b)(6) of this section. A recipient also must ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence, as set forth in paragraph (b)(5)(vii) of this section. Any materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment;

¹¹ Notice of the Hearing Chair may precede notice of the Hearing Panel members.

attendant difficulty of scheduling and rescheduling them in a timely manner, it may not be possible to accommodate all scheduling requests. The Hearing Chair may also reschedule a hearing, without a request by the parties, when there is reasonable cause to do so.

21.6 Newly Discovered Evidence

If after the issuance of the final investigative record and investigative report and prior to the issuance of the Hearing Panel decision, a party seeks to present a witness or introduce evidence not requested prior to the hearing and not disclosed to the investigator, the Hearing Chair may grant such request upon a showing that the witness or evidence has information that is directly related to the allegations in the Formal Complaint, material, newly discovered, and could not have been discovered during the investigation with due diligence.

Where a Hearing Chair permits a party to introduce a newly discovered witness or evidence the Hearing Chair will reschedule or adjourn the hearing for the investigator to investigate the newly discovered witness or evidence.

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

21.7 Pre-Hearing Submissions by the Parties

Prior to a hearing, and upon providing the parties with copies of the final investigative record and report, the Title IX Coordinator will instruct the parties, in writing, that in addition to providing comments on the final investigative record and report, they will also have the opportunity to make certain decisions and requests regarding the conduct of the hearing. This process is designed to ensure that the hearing is conducted in an equitable, respectful, and efficient manner.

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

21.7.1. Written Opening Statements .

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

This statement is the parties' opportunity to tell the Hearing Panel why it should find in the party's favor. In presenting their side, the parties should be responsive to the investigative record by directly addressing and responding to specific information contained in the investigative record and citing specific page numbers.

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

The parties may not add or address information not contained in the investigative record, as the Hearing Panel will not consider new information unless such constitutes newly discovered evidence. See 21.6 above. Nor may the parties address issues that pertain to sanctions and remedies. The Hearing Panel does not consider these issues when determining responsibility. The parties may appropriately raise such issues in their Impact/Mitigation Statements.

21.8 Impact/Mitigation Statement

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

distributed to both parties only upon a finding of responsibility, and, in that instance, when the Title IX Coordinator distributes the Hearing Panel's written decision to the parties.

21.9 Hearing Process and Format

21.9.1. Overview of Hearing Process and Format

All hearings will be private, and the parties cannot waive the right to a live hearing. The only persons present may be the parties, their advisor, witnesses (when testifying), the Hearing Panel, and any hearing panel staff necessary for the conduct of the hearing.

The Law School may still proceed with the live hearing in the absence of a party, and may reach a determination of responsibility in their absence, including through any evidence gathered that does not constitute a "statement" by that party.¹²

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

Formal rules of evidence will not apply.

Evidence that was excluded or redacted from the investigative record as impermissible under these procedures or applicable law will not be admissible at the hearing absent application by a party to the panel to have it included and a ruling by the panel to allow such evidence.

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

- Introduction by the Hearing Chair. The Hearing Chair will explain the hearing process, address any necessary procedural issues, and answer questions
- Opening statements by the parties
- Testimony by the Complainant
- Testimony by the responding party
- Testimony by any witnesses
- Closing statements by the Complainant followed by the responding party

21.9.2. Testimony

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

The Hearing Panel will determine the order in which the parties and witnesses will testify. Both the Complainant and the Respondent may testify or decline to testify and may make their election when their turn to testify arises. Witnesses cannot be compelled to participate in the live hearing, and have the right not to participate in the hearing free from retaliation. If a party or witness testifies, they are expected to answer all questions asked, absent assertion of a legal privilege by the individual testifying.

21.9.2.1 Questioning by the Hearing Chair and Hearing Panel

The Hearing Panel and Chair will question the parties and the witnesses first. When the Hearing Panel and Hearing Chair have concluded questioning a particular party or witness, each parties' advisor will then be provided an opportunity to cross examine the other party or witness.

21.9.2.2 Cross Examination by the Advisor

¹² 85 Fed. Reg. 30026, 30361 (May 19, 2020).

The parties are not permitted to conduct cross-examination; it must be conducted by the advisor. As a result, if a party does not select an advisor, the Law School will provide an advisor to serve in this role for the limited purpose of conducting the cross-examination at no fee or charge to the party.

If a party does not attend the live hearing, the party's advisor may appear and conduct cross-examination on their behalf.

21.9.2.3 Live-Cross Examination Procedure

During live-cross examination the advisor will be permitted to ask the other party or witness relevant questions and follow-up questions, including those challenging credibility directly, orally, and in real time.

Before any cross-examination question is answered, the Hearing Chair will determine if the question is relevant. Cross-examination questions that are duplicative of those already asked, including by the Hearing Chair may be deemed irrelevant if they have been asked and answered.

During the Parties' cross-examination, the Hearing Chair will have the authority to pause cross-examination at any time for the purposes of asking Hearing Chair own follow up questions; and any time necessary in order to enforce the established rules of decorum.

If, following cross examination of a party or witness by an advisor, the Hearing Panel or Hearing Chair has any additional questions, they may pose those questions. The advisors will then have one opportunity to pose additional questions of the other party or witness. Questioning of each party or witness will conclude with the Hearing Panel having the opportunity to ask a final round of questions.

21.9.2.4 Effect of Not Submitting to Cross Examination

If a party does not submit to cross-examination, the Hearing Panel cannot rely on any prior statements made by that party in reaching a determination regarding responsibility, but may reach a determination regarding responsibility based on evidence that does not constitute a "statement" by that party.

The Hearing Panel cannot draw an inference about the determination regarding responsibility based solely on a party's absence from the live hearing or refusal to answer cross examination or other questions.

If a witness does not submit to cross-examination, as described below, the Hearing Panel cannot rely on any statements made by that witness in reaching a determination regarding responsibility, including any statement relayed by the absent witness to a witness or party who testifies at the live hearing.

21.9.2.5 Waiver of Cross Examination

Should a Party or the Party's Advisor choose not to cross-examine the other party or a witness, the Party shall affirmatively waive cross-examination through a written or oral statement to the Hearing Chair and Panel. A Party's waiver of cross-examination does not eliminate the ability of the Hearing Panel to use statements made by the Party.

21.9.3. Closing Statements

The parties may have oral closing statements. This is the opportunity for the parties to marshal the evidence in the hearing record and suggest inferences and conclusions.

The parties may not add or address information not contained in the hearing record, as the Hearing Panel will not consider new information. Nor may the parties address issues that pertain to sanctions and remedies. The Hearing Panel does not consider these issues when determining responsibility. The parties may appropriately raise such issues in their Impact/Mitigation Statements.

The Hearing Chair will establish a time limit for brief oral closing statements.

21.10 Determination on Findings of Responsibility

After closing arguments, the Hearing Panel may begin its deliberations. Deliberations will be in private and they will not be audio-recorded. The Hearing Panel will make its decision based upon a majority vote. Deliberations will be completed as expeditiously as possible.

21.10.1. Deliberations on Finding of Responsibility; General Considerations for Evaluation of Evidence

Determinations of responsibility will be based on the relevant evidence accepted and reviewed by the Hearing Panel. While the opportunity for cross-examination is required in all Title IX hearings, determinations regarding responsibility may be based in part, or entirely, on documentary, audiovisual, and digital evidence, as warranted in the reasoned judgment of the Decision-maker.

Decision-makers shall not draw inferences regarding a party or witness' credibility based on the party or witness' status as a Complainant, Respondent, or witness, nor shall it base its judgments in stereotypes about how a party or witness would or should act under the circumstances.

21.10.1. Deliberations on Sanction after a Finding of Responsibility

A Hearing Panel that finds the responding party responsible will continue its deliberations to consider sanctions and remedies. Remedies should be designed to restore or preserve equal access to the institution's education program or activity.

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

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

The Hearing Panel will determine sanctions and remedies by a majority vote. In determining sanctions and remedies, the Hearing Panel will consider:

- The severity of the prohibited conduct;
- The circumstances of the prohibited conduct;
- The impact of the prohibited conduct and sanctions and remedies on the Complainant;
- The impact of the prohibited conduct and sanctions and remedies on the community;
- The impact of the prohibited conduct and sanctions and remedies on the responding party;
- Prior misconduct by the responding party, including the responding party's previous school disciplinary record, both at the Law School and elsewhere, and any criminal convictions;
- The goals of the Law School's Title IX grievance process and procedures; and
- Any other mitigating, aggravating, or compelling factors.

The Hearing Panel may impose one or more appropriate sanctions and remedies provided in relevant policies of the Law School.

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

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

21.11 Components of the Written Determination Regarding Responsibility

The written determination regarding responsibility will be issued simultaneously to all parties through their Law School email account, or other reasonable means as necessary. The Determination will include:

1. Identification of the allegations potentially constituting covered sexual harassment;
2. A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
3. Findings of fact supporting the determination;
4. Conclusions regarding which section of these procedures or other applicable policies, if any, the Respondent has or has not violated;
5. For each allegation:
 - a. A statement of, and rationale for, a determination regarding responsibility;
 - b. A statement of, and rationale for, any disciplinary sanctions the recipient imposes on the Respondent; and
 - c. A statement of, and rationale for, whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the recipient to the Complainant; and
6. The Law School's procedures and the permitted reasons for the Complainant and Respondent to appeal (described below in "Appeal").

21.12 Timeline of Determination Regarding Responsibility

If there are no extenuating circumstances, the determination regarding responsibility will be issued by the Law School within ten (10) calendar days of the completion of the hearing.

21.13 Finality

The determination regarding responsibility becomes final either on the date that the institution provides the parties with the written determination of the result of the appeal, if an appeal is filed consistent with the procedures and timeline outlined in "Appeals" below, or if an appeal is not filed, the date on which the opportunity to appeal expires.

21.14 Hearing Record

An audio recording will be made of all hearings, but not of deliberations. The parties may listen to the audio recording of the hearing during business hours at a secure and private campus location, with access facilitated by the Title IX Coordinator.

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

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

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

The hearing record will include: the audio recording of the hearing, the Hearing Panel's decision, the final investigative record and report, the parties' pre-hearing submissions, the written witness list, written opening and closing statements, written submissions permitted by these procedures made during the hearing, and the parties' Impact/Mitigation Statements (if considered by the Hearing Panel). The hearing record may also include a transcript of the hearing.

22. Appeals

Each party may appeal (1) the dismissal of a Formal Complaint or any included allegations and/or (2) a determination regarding responsibility. To appeal, a party must submit their written appeal within ten (10) calendar days of being notified of the decision, indicating the grounds for the appeal.

The limited grounds for appeal available are as follows:

- Procedural irregularity that affected the outcome of the matter (i.e. a failure to follow the institution's own procedures);
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
- The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against an individual party, or for or against Complainants or Respondents in general, that affected the outcome of the matter.
- The sanctions or remedies are not commensurate with the injury/violation or are unjust.

The appeal statement must set forth:

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

The appeal statement will be limited to 3500 words. Appeals should be submitted in electronic form using ARIAL or TIMES NEW ROMAN, 12 point font, and single-spaced. Appeals should use footnotes, not endnotes. Appeals that do not meet these standards may be returned to the party for correction, but the time for appeal will not be extended unless there is evidence that technical malfunction caused the appeal document not to meet these standards.

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

The submission of appeal stays any sanctions for the pendency of an appeal. Supportive measures and remote learning opportunities remain available during the pendency of the appeal.

If a party appeals, the institution will as soon as practicable notify the other party in writing of the appeal, however the time for appeal shall be offered equitably to all parties and shall not be extended for any party solely because the other party filed an appeal.

Appeals will be decided by a panel who will be free of conflict of interest and bias, and did not serve as investigator, Title IX Coordinator, or hearing decision maker in the same matter.

The Appeal Panel will establish a reasonable schedule for issuing a written decision, typically no later than ten (10) business days after receipt of the parties' submission or the time for submission has expired.

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

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

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

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

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

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

Outcome of appeal will be provided in writing simultaneously to both parties, and include rationale for the decision.

23. Request for a Stay Pending Appeal

The Appeal Panel has discretion to stay any sanctions pending a final decision on the appeal. It may, but is not required to, stay a sanction where the appealing party demonstrates the need for a stay by a clear showing.

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

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

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

24. Transcript Notations and Withholding Degrees

Pursuant to the Office of the Law School Registrar transcript notation policy for student conduct matters, the following actions will result in a permanent transcript notation for a student:

- Dismissal (i.e., expulsion) after a finding of responsibility;
- Suspension after a finding of responsibility; and
- Withdrawal from the Law School while a Formal Complaint is pending.

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

Degrees will not be awarded to the Respondent while a Formal Complaint under these procedures is pending. The Law School may withhold awarding a degree otherwise earned until the adjudication process set forth in these procedures is complete, including the satisfaction of any sanctions imposed.

The Law School will temporarily note the Respondent's transcript once a Formal Complaint is made pursuant to these procedures. The Law School will temporarily note the responding party's transcript if the responding party has been temporarily suspended pursuant to these procedures. Notice of a notation on a transcript will be provided to the student who should consult the Law School's Family Educational Rights and Privacy Act, 20 USC §1232g; 34 CFR Part 99, (FERPA) policy as to rights concerning such notations.