

# 2020 Albany Law School Policy and Procedures for the Resolution of Prohibited Conduct Within the Scope of Title IX.

Confidentiality and Privacy have distinct meanings under this Policy. Please see Sections 4.3 and 5.5 of this Policy for an explanation of the differences, a list of resources that are Confidential and a list of resources that are Non-Confidential. If you would like your report to remain confidential, it is important that you read and understand these provisions. Please contact the Title IX Coordinator if you have any questions.

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# 1. Introduction, Title IX, and General Rules of Application

Albany Law School (“the Law School”) is committed to providing a safe, inclusive, and respectful learning, living, and working environment for its students, faculty, and staff. The Law School is also committed to supporting students accused of prohibited conduct who go through the disciplinary process.

The Policy and Procedures for the Resolution of Prohibited Conduct Within the Scope of Title IX (“the Policy”<sup>1</sup>) reflect the Law School’s commitment and provide a means to address allegations of sex discrimination, including sex-based violence. The Policy is consistent with Title IX, the Violence Against Women Act (“VAWA”), and New York State Education Law 129-B.

## 1.1 Title IX

The Title IX of the Educational Amendments Act 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 that<sup>2</sup>:

- Defines “sexual harassment” to include misconduct that:
  - is “severe, pervasive, and objectively offensive,”
  - involves and employee conditioning educational benefits on participation in unwelcome sexual conduct (i.e. quid pro quo), and
  - is a form of sex-based violence (including sexual assault, dating violence, domestic violence, and sex-based stalking);
- 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.

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<sup>1</sup> References to “Policy” throughout this document encompass the policy and the procedures associated with that policy.

<sup>2</sup> 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>

Throughout this Policy, various Law School officials are assigned responsibility for performing specific functions. Named officials are authorized to delegate responsibility to other appropriate Law School officials and non-law school consultants except where such delegation contravenes Law School policy. Additionally, named officials and their designees may consult with appropriate Law School officials, the Law School counsel, and non-law school consultants and subject matter experts.

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

Nothing in the Policy shall be construed to abridge academic freedom and inquiry, principles of free speech, or the Law School's educational mission.

**Confidentiality and Privacy have distinct meanings under this Policy. Please see Sections 4.3 and 5.5 of this Policy for an explanation of the differences, a list of resources that are Confidential and a list of resources that are Non-Confidential. If you would like your report to remain confidential, it is important that you read and understand these provisions. Please contact the Title IX Coordinator if you have any questions.**

## 1.2 General Rules of Application

### 1.2.1 Effective Date

This Policy will apply in all cases where the conduct alleged in a Formal Complaint, as that term is defined herein, occurred and was reported between August 14, 2020 and August 1, 2024 or was reported after January 8, 2025.

### 1.2.2 Non-Discrimination in Application

The requirements and protections of the Policy 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>.

### 1.2.3 Designation of the Parties

A person who is the subject of a report or initiates a Formal Complaint of prohibited conduct under the Policy 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 also referred to as "Party" or "Parties" throughout this Policy.

## 2. Jurisdiction and Scope

Under the Department of Education's Title IX Regulations, effective August 14, 2020, the following Policy will apply **only** to a narrow category of cases. Those cases meeting the definitions and jurisdictional elements below will follow this policy. Those cases that do not fit within these new guidelines will be handled through the Law School's Student Policy on Harassment, Sexual Assault, and Relationship Violence or another applicable policy; this is not to suggest that any case is more or less important, but instead a reflection of federal regulations that apply only to a specifically-identified set of cases. The Law School will have the discretion to refer complaints of misconduct not covered by this Policy to any other appropriate office for handling under any other applicable Law School Policy or code.

**If you are unclear about any of the provisions below and would like to get more information, you may speak on a non-confidential basis with the Title IX Coordinator. If you would like to have more information, but prefer to speak with someone confidentially, you may speak with a confidential resource, as listed below in the resources section.**

### 2.1 Nature of Complaint

For the purposes of this Policy, a report of prohibited conduct on the basis of sex must meet the definition of Sexual Harassment as it is defined in 34 CFR §106.30. Accordingly, the nature of the complaint must fall into one of the following categories:

- Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies the Complainant equal access to an education program or activity, including employment;
- 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; or
- A complaint of Dating Violence, Domestic Violence, Stalking, or Sexual Assault as defined in Section 3, below.

### 2.2 Location of Incident

This Policy only applies if the incident occurred in one or more of the following locations:

- 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

This Policy only applies 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. This includes current students and current employees. It may also include applicants, admitted students, students on a leave of absence, alumni or former students, if such person was participating or attempting to participate in a Law School program or activity at the time the alleged prohibited conduct occurred.



## 2.4 Identity of the Respondent

This Policy only applies to Respondents, who at the time of the filing of a Formal Complaint, are participating in or attempting to participate in the education program or activity of the Law School. This includes current students and current employees. It may also include applicants, admitted students, students on leave of absence, alumni or former students, if such person was participating or attempting to participate in a Law School program or activity at the time the alleged prohibited conduct occurred. If the President and Dean or a Trustee of the Law School is a Respondent, the “Policy and Procedures for the Resolution of Prohibited Conduct within the Scope of Title IX Where the President and Dean or a Trustee of the Law School is a Respondent” shall be the applicable policy which shall be used.

## 3. Prohibited Conduct

This section sets out definitions of Prohibited Conduct under this Policy. To determine whether alleged conduct is prohibited under any of the definitions below, the standard applied is whether a reasonable person would consider the alleged conduct to fall within that definition. Please see Section 4 below for definitions of additional policy related concepts.

### 3.1 Sexual Harassment

Any conduct committed by any person upon any other person 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; or
- B. Hostile Environment: Unwelcome conduct<sup>3</sup> determined by a reasonable person to be so severe, 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

As required by the May 2020 Title IX regulations, the definition of Sexual Offenses used in the Policy incorporates the definitions of the FBI’s Uniform Crime Reporting (NIBRS) program. Sexual Assault includes both forcible and non-forcible sexual offenses:

- Sexual offenses, Forcible: Any sexual act directed against another person without the Affirmative Consent of the Complainant, including instances in which the Complainant is incapable of giving Affirmative 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 Affirmative 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

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<sup>3</sup> Unwelcomeness is subjective and determined by the Complainant. Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances (“in the shoes of the Complainant”), including the context in which the alleged incident occurred.

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.
- Sexual 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. In New York, the age of consent is 17 years of age.

### 3.3 Dating Violence

Violence 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 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. Definitions

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

More specifically:

- Consent to any sexual act or prior consensual sexual activity between or with any Party does not necessarily constitute consent to any other sexual act.
- Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
- Consent may be initially given but withdrawn at any time.
- Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent.
- Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.
- When consent is withdrawn or can no longer be given, sexual activity must stop.

**4.2 Advisor:** At all stages under this Policy, 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 this Policy, Advisors 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 may confer with the Party. Advisors will also conduct cross examination of the opposing Party and witnesses.

During a hearing, Parties must have an Advisor. If a Party does not have an Advisor who can be present for the hearing, the Law School will provide an Advisor for the purpose of cross-examining the other Party and witnesses. Other than cross-examination, the Advisor may not participate directly in, represent, impede or interfere with the hearing proceedings.

By accepting the role of Advisor, the Advisor agrees to comply with the rules and processes set forth in this Policy, including rules regarding privacy.

The Law School will not interfere with the Parties' right to have an Advisor and fully expects Advisors to adhere to the Law School's Title IX Policy and accompanying procedures. In extreme cases, where either the Title IX Coordinator or the Hearing Panel determines that an Advisor's conduct undermines the integrity of the process, 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.

#### 4.3 Confidentiality and Privacy: Confidentiality and Privacy have distinct meanings under this Policy.

- **“Confidentiality”** generally means that information shared with a person or entity identified as a confidential resource cannot be revealed to any other person or office, unless written permission is granted by the individual to share their information. See Section 5.5.2 of this Policy for a list of some confidential resources.
- **“Privacy”** generally means that information related to a report of Prohibited Conduct will only be shared with a limited circle of individuals who “need to know” in order to assist in the assessment, investigation, or resolution of the report. While not bound by confidentiality, these individuals will be discreet and respect the privacy of all individuals involved in the process.

The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act (“FERPA”). The privacy of an individual's medical and related records may be protected by the Health Insurance Portability and Accountability Act (“HIPAA”), FERPA and any other applicable federal or state law or regulation. Access to an employee's personnel records may be restricted by applicable state and federal law.

**4.4 Conflict of Interest or Bias:** After notice of a Formal Complaint is issued to Complainant and Respondent, each Party may object to the Title IX Coordinator, designated Investigator, Hearing Panelist, or Appeal Panelist on the grounds of a demonstrated bias or actual conflict of interest. Both Parties will have three (3) business days from the date of the notice naming the aforementioned positions to object. Objections to the appointment of the Investigator, Hearing Panelist, or Appeal Panelist will be made, in writing, to the Title IX Coordinator. Objections to the Title IX Coordinator must be made, in writing, to the appropriate reviewing administrator.<sup>4</sup> If the objection is substantiated, that individual will be replaced.

A conflict of interest may include, for example, situations where an individual is a Party's family member, close friend, current or former faculty member, Advisor, or has another similar relationship with a Party. The fact that an individual is the same or different gender, race, etc. of a Party or individual involved in the process is not a conflict of interest. Additionally, the following do not constitute conflicts

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<sup>4</sup> Where the objecting party is a student, the review will be conducted by the Associate Dean of Student Affairs. Where the objecting party is an employee, the review will be conducted by the Human Resources Director. Where the objecting party is a member of the faculty, the review will be conducted by the Dean.

of interest or bias: submission of a complaint or report in any other proceeding; engagement and facilitation of an investigation in any other proceeding; or employment status or title or previous employment.

**4.5 Days:** Any reference to days within this Policy, unless otherwise noted, should be counted as Law School business days unless otherwise specified.

**4.6 Formal Complaint:** The term “Formal Complaint” has a very specific definition within this Policy, and whether one is filed does not depend on the label applied, but instead on whether certain specific elements are met. A Formal Complaint is the act that initiates a resolution process, including an investigation. A Formal Complaint must be filed and signed by a Complainant or signed by the Title IX Coordinator, alleging conduct which would constitute a violation of this Policy and requesting that the Law School initiate a resolution to the allegation(s). Section 10.1 of this Policy sets forth the specific information that must be included in the Formal Complaint. A complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail (email). Individuals who would like more information about filing a Formal Complaint are invited to contact the Title IX Coordinator for additional information.

In the event that the Title IX Coordinator signs the Formal Complaint, this act does not make the Title IX Coordinator the “Complainant” for purposes of this Policy.

**4.7 Incapacitation:** A state where an individual cannot make an informed and rational decision to engage in sexual activity because of a lack of conscious understanding of the fact, nature, or extent of the act (e.g., to understand the who, what, when, where, why, or how of the sexual interaction) or is physically helpless. An individual asleep or unconscious is considered to be incapacitated and unable to consent to sexual activity. An individual will also be considered incapacitated if the person cannot understand the nature of the activity or communicate due to a mental or physical condition. Incapacitation may result from the use of alcohol or other drugs, including medication. Consumption of alcohol or other drugs alone is insufficient to establish incapacitation.

The impact of alcohol and drugs varies from person to person, and evaluating incapacitation requires an assessment of how the consumption of alcohol and/or drugs impacts an individual’s: (a) decision-making ability; (b) awareness of consequences; (c) ability to make informed judgments; or (d) capacity to appreciate the nature and the quality of the act.

It will not be a valid excuse that the Respondent believed that the Complainant consented to the sexual activity if the Respondent knew or reasonably should have known that the Complainant was unable to consent to the sexual activity under any of the following circumstances: (a) the Complainant was asleep or unconscious; (b) the Complainant was incapacitated due to the influence of alcohol or other drugs, including medication, so that the Complainant could not understand the fact, nature, or extent of the sexual activity; or (c) the Complainant was unable to communicate due to a mental or physical condition.

Whether the Respondent reasonably should have known that the Complainant was incapacitated will be evaluated using an objective reasonable person standard. The fact that the Respondent was actually unaware of the Complainant’s incapacity is irrelevant to this analysis, particularly where the Respondent’s failure to appreciate the Complainant’s Incapacitation resulted from the Respondent’s failure to take reasonable steps to determine the Complainant’s

capacity or where the Respondent's own capacity was impaired (from alcohol or drugs) and caused the Respondent to misjudge the Complainant's capacity.

It is the responsibility of the individual initiating the sexual activity to be aware of the intoxication level of the other Party before engaging in sexual activity. In general, sexual activity while under the influence of alcohol or other drugs poses a risk to all Parties. If there is any doubt as to the level or extent of the other individual's intoxication, it is safest to forgo or cease any sexual contact or activity.

**4.8 Preponderance of Evidence:** The standard of evidence used during the investigation to determine whether the alleged conduct occurred and whether this Policy was violated. It means "more likely than not."

**4.9 Prohibited Conduct:** Conduct that meets one of the definition in Section 3 of this Policy.

**4.10 Protected Activity:** Exercising any right or privilege under this Policy. Examples of protected activities include reporting (internally or externally) a complaint of Prohibited Conduct in good faith, assisting others in making such a report, participating in a resolution process, acting in good faith to oppose conduct that constitutes a violation of this Policy, honestly participating as an Investigator, witness, Hearing Panel member, or otherwise assisting in, an investigation or proceeding related to an alleged violation of this Policy.

**4.11 Relevance:** Information included in an Investigative Report or questions asked during a hearing must be relevant to the allegations. This includes inculpatory and exculpatory evidence, that is information that might help to prove or disprove facts related to whether the allegation occurred, or the allegation is a violation of the Policy.

**4.12 Retaliation:** Retaliation is prohibited under this Policy. Retaliation is defined as any materially adverse action against a person who reports, complains about, or who otherwise participates in good faith in any manner related to this Policy. Materially adverse action includes conduct that intimidates, threatens, coerces, discriminates against, harasses or in any other way seeks to discourage participation in or activity under this Policy. Retaliation does not include good-faith actions lawfully pursued in response to a report of Prohibited Conduct.

Any person who believes they have experienced retaliation under this Policy should contact the Title IX Coordinator who will forward any complaint of retaliation to the Vice President of Human Resources for handling.

**4.13 Standard of Evidence:** The decision regarding a Respondent's responsibility will be determined by a Preponderance of the Evidence.

**4.14 Supportive Measures:** Non-disciplinary, non-punitive, free of charge individualized services offered equitably to a Complainant and/or the Respondent by the Law School as appropriate and reasonably available. Such measures are designed to restore or preserve equal access to the Law School's education program or activity without unreasonably burdening the other Party. Supportive measures are also available whether or not a Formal Complaint has been filed. Supportive measures may include, but are not limited to: academic support, class and work schedule changes, mutual ban on contact (no-contact directive), increased security, or other measures as determined on a case-by-case basis. Supportive measures may be offered to the Complainant or Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed.

*Note: Any Supportive Measures put in place will be kept confidential, except to extent that doing so impairs the ability of the institution to provide the Supportive Measures.*

**4.15 Third-Party Reporter:** A person other than the Complainant who reports an incident or allegation of Prohibited Conduct.

**4.16 Title IX Coordinator:** The Law School official charged with coordinating the Law School's overall compliance with Title IX and related Policy and procedures, including supportive measures.

## 5. Resources for Students

### 5.1. Immediate Assistance

If you are the victim of a crime, or any violation of this Policy, first get yourself to a safe place if you have not already done so. UHA Public Safety and the Albany Police Departments can help you do this.

- UHA Public Safety (518) 244-3177
- Albany Police Department 911 or (518) 438-4000

### 5.2 Medical Attention

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.

Survivors of sexual assault are encouraged to be examined as quickly as possible at a facility that uses Sexual Assault Nurse Examiners ("SANE"). Albany Medical Center is a SANE facility. Remember that this medical treatment may also provide the opportunity for the collection and documentation of evidence, should you decide to pursue the incident and offender through the criminal law enforcement system. UHA Public Safety and the Albany Police Department may assist you in this effort as well.

- Albany Medical Center: 43 New Scotland Avenue, Albany, NY 12208  
Emergency Room: (518) 262-3131

### 5.3 Reporting the incident to law enforcement

A victim of a crime, including sexual assault or relationship violence, is encouraged to, but is not required to, report the incident to local law enforcement and pursue criminal charges. Albany Law School encourages reporting of all criminal offenses to law enforcement authorities.

The Albany Law School disciplinary process and the criminal process are not mutually exclusive. This means that an individual may pursue either a criminal complaint or internal complaint with Albany Law School or both. Any internal Law School investigation and/or hearing process will be conducted concurrently with any criminal justice investigation and proceeding that may be pending. Temporary delays in Albany Law School's internal processes may be requested by local law enforcement authorities for the purpose of gathering evidence. Any requested temporary delay shall not last more than ten (10) days, except when local law enforcement authorities specifically request and justify a longer delay.

In criminal cases, including non-consensual sex offenses, the preservation of evidence is critical and must be done properly and promptly. The local law enforcement authorities can assist in filing a criminal

complaint and in securing appropriate examination, including by a Sexual Assault Nurse Examiner (SANE). For assistance with a criminal complaint, contact:

- UHA Public Safety (518) 244-3177
- Albany Police Department (518) 438-4000
- New York State Police (518) 783-3211.

New York State Police maintain a **24-hour hotline (1-844-845-7269)** staffed by individuals trained to respond to sexual assault. Reporting individuals should understand that not all sexual assault or relationship violence offenses under this Policy are crimes and that the standard that local law enforcement employs in processing complaints is different than Albany Law School's standard under this Policy. Questions about whether incidents violate criminal laws and how the criminal process works should be directed to local law enforcement officials or the Albany County District Attorney.

### 5.4 Orders of Protection

Orders of Protection and other forms of legal protection may be available to individuals who have experienced or are threatened with violence. In appropriate circumstances, an Order of Protection may be available that restricts the offender's right to enter Albany Law School property, and Albany Law School will abide by any lawfully issued Order of Protection. Albany Law School officials will, upon request, provide reasonable assistance to any member of the Albany Law School community in obtaining an Order of Protection or, if outside of New York State, an equivalent Protective or Restraining Order, including providing that person with:

- a copy of an Order of Protection, or equivalent, when received by Albany Law School and providing that person with an opportunity to meet or speak with an Albany Law School representative, or other appropriate individual, who can explain the order and answer questions about it, including information from the Order about the other person's responsibility to stay away from the protected person or persons;
- an explanation of the consequences for violating these orders, including but not limited to, arrest, additional conduct charges, and interim suspension; and
- assistance in contacting local law enforcement related to alleged violations of such Order of Protection.

### 5.5 Confidential and Non-Confidential Reporting

A student who has been the victim of sexual assault or relationship violence has the right to make a report to Albany Law School, local law enforcement and/or the New York State Police, or choose not to report.

If reported to Albany Law School under this Policy, a reporting individual will be protected from retaliation and will receive appropriate assistance and resources from Albany Law School. A Student's Bill of Rights for cases involving sexual assault, domestic violence, dating violence or stalking is located in Section 7 of this Policy.

Some resources on campus are confidential and will not share any identifying information with others, except as required by law in emergency circumstances. All Albany Law School staff, faculty and administrators have a duty to report to the Harassment Committee, the Office of Student Affairs, the Director of Human Resources or the Title IX Coordinator any reported or suspected violations of this Policy. Therefore, any report or disclosure to an on-campus source is not considered confidential and may result in the initiation of an investigation.



### 5.5.1 Resources for Reporting to Law Enforcement/Prosecution

- Albany County Crime Victim and Sexual Violence Center  
112 State Street, Room 1100  
Albany, NY 12207  
(518) 447-7100  
Hotline: (518) 447-7716  
Website: [www.albanycounty.com/departments/cvsvc/](http://www.albanycounty.com/departments/cvsvc/)
- The Legal Project  
24 Aviation Road, Suite 101  
Albany, NY 12205  
Phone: (518) 435-1770  
Website: [www.legalproject.org](http://www.legalproject.org)
- Equinox Domestic Violence Services  
95 Central Avenue, Albany, NY 12206  
(518) 434-6135  
Hotline: (518) 432-7865  
Website: [www.equinoxinc.org/](http://www.equinoxinc.org/)

### 5.5.2 Confidential Resources for Victim Support and Advocacy

*(ONLY these sources will NOT automatically report to local law enforcement, district attorney or Albany Law School)*

A student seeking only support, resources and treatment (and not responsive action by Albany Law School or law enforcement) should contact the following confidential resources.

- Dr. Peter Cornish, Campus Counselor  
[Dr.PeterCornish@yahoo.com](mailto:Dr.PeterCornish@yahoo.com)  
Room MW213, 1928 Building
- Equinox Domestic Violence Services  
95 Central Avenue, Albany, NY 12206  
(518) 434-6135  
Hotline: (518) 432-7865  
Website: [www.equinoxinc.org/](http://www.equinoxinc.org/)
- Albany County Crime Victim and Sexual Violence Center  
112 State Street, Room 1100  
Albany, NY 12207  
(518) 447-7100  
Hotline: (518) 447-7716  
Website: [www.albanycounty.com/departments/cvsvc/](http://www.albanycounty.com/departments/cvsvc/) 11
- Resource Advisor  
1-888-209-7840  
[www.ResourceAdvisor.Anthem.com](http://www.ResourceAdvisor.Anthem.com), log in with program name: AnthemResourceAdvisor

*Sharing information with any Confidential Resource listed above will not result in a report to Albany Law School or investigatory or disciplinary action against the alleged offender. In order to initiate an investigation or disciplinary action, report the incident to any one of Albany Law School's Non-Confidential Resources mentioned below.*

### 5.5.3 On-Campus Non-Confidential Resources

Any person having a complaint of harassment, sexual assault or relationship violence is encouraged to promptly make an internal report to Albany Law School by contacting the Director of Human Resources, at (518) 445-2396 or [sdonn@albanylaw.edu](mailto:sdonn@albanylaw.edu) or the Title IX Coordinator, at (518) 445-3346 or [TitleIX@albanylaw.edu](mailto:TitleIX@albanylaw.edu).

Reports of violations of this Policy may also be reported to any member of the Albany Law School Harassment Committee, which is a group of faculty and staff members trained to respond to alleged violations of this Policy. A current list of the Albany Law School Harassment Committee members can be found at <https://www.albanylaw.edu/sites/default/files/about/campus-policies-and-notice/Document/harassment-committee-members.pdf>.

A report may also be made to the Office for Student Affairs, at (518) 445-3235 or [StudentAffairs@albanylaw.edu](mailto:StudentAffairs@albanylaw.edu). Information shared at public awareness and advocacy events is not considered a report to Albany Law School.

The Office of Student Affairs is available to inform persons affected about the reporting procedures for relationship violence, harassment and sexual assault, and offer appropriate referrals to resources, including counseling, health, mental health and victim advocacy, in a safe and supportive setting.

## 6. Reporting Information

The Law School encourages individuals to report incidents involving Prohibited Conduct and other potential violations of other Law School policies. The Law School does not limit the timeframe for reporting an incident regardless of when the incident occurred. However, the Law School encourages individuals to report as soon as practical, as memories may fade and evidence may be lost over time.

Individuals may also notify the Title IX Coordinator if they believe someone else may have experienced conduct that would be a violation of this Policy.

Reports of potential violations of this Policy may be made to the Title IX Coordinator, as follows:

By Phone: (518) 445-3346

By mail: Albany Law School Attn:  
Title IX Coordinator  
80 New Scotland Avenue Albany, NY 12208-3494

In person: Room 208, 1928 Building

By email: [titleix@albanylaw.edu](mailto:titleix@albanylaw.edu)

Reports to the Title IX Coordinator of potential violations of this Policy will be kept private to the extent possible for the Law School to respond to the report, but reports made to the Title IX Coordinator are not confidential.

Upon being notified of a report the Title IX Coordinator will reach out to the Complainant to schedule an interview and will also provide Complainant information regarding resources, rights, Supportive Measures, and reporting options, and will explain that Supportive Measures are available without filing a Formal Complaint.

**6.1 Anonymous Reports:** Any individual may make an anonymous report concerning an act of Prohibited Conduct. Depending on the extent of information available about the incident or the individuals involved, however, the Law School's ability to respond to an anonymous report may be limited. The Title IX Coordinator will receive the anonymous report and will determine any appropriate steps, including individual or community remedies as appropriate, and also ensure compliance with all Clery Act obligations.

**6.2 Amnesty:** The health and safety of every student at the Law School is of utmost importance. The Law School recognizes that students who have been drinking or using other drugs (whether such use is voluntary or involuntary) at the time that Prohibited Conduct under this Policy occurs may be hesitant to report incidents due to fear of potential consequences for their own conduct. The Law School strongly encourages students to report such Prohibited Conduct. A student bystander or Complainant acting in good faith who discloses any incident of Prohibited Conduct under this Policy to a Law School official or to law enforcement shall not be subject to disciplinary action. While no disciplinary action will be taken, the Law School reserves the right to take steps necessary to address health and safety concerns for the individual and the community, as well as the right to report truthfully to licensing bodies.

### 6.3 Law Enforcement

Nothing in this 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.

## 7. Student Rights and Responsibilities

The Law School provides accessible, prompt, and fair methods of addressing reports of Prohibited Conduct to all Parties. Both the New York State Students' Bill of Rights and the Law School's process give a student Complainant and a student Respondent the following rights, explained in the subsequent sections.

The New York State Students' Bill of Rights includes rights:

- To respect, dignity, and sensitivity;
- To appropriate support from the Law School;
- To privacy to the extent possible consistent with applicable law and Law School policy;
- To information about the Law School's Gender-Based Misconduct Policy and Procedures for Students;
- To the presence of an advisor throughout the process;

- To participate or to decline to participate in the disciplinary process (however, a decision not to participate in the process either wholly or in part may not prevent the process from proceeding with the information available);
- To a prompt and thorough review of the allegations;
- To adequate time to review documents following an investigation;
- To adequate time to prepare for a hearing;
- To an opportunity to challenge Investigator(s) or Hearing/Appellate Panel member(s) for a possible conflict of interest in cases involving an investigation and Hearing/Appellate Panel;
- To refrain from making self-incriminating statements;
- To an appeal of the decision made by the Hearing Panel and of any sanctions imposed by the Sanctioning Officer in cases involving an investigation and Hearing Panel;
- To notification, in writing, of the case resolution, including the outcome of any appeal, where applicable;
- To report the incident to law enforcement at any time; and
- To understand that information collected in the process may be subpoenaed in criminal or civil proceedings.

## 8. Response to a Report

### 8.1 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.

#### 8.1.1 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.

#### 8.1.2 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 Respondent, any witnesses, and/or any other third party with knowledge of the reported incident, and take reasonable and appropriate steps to respond to the report of Prohibited Conduct consistent with applicable federal and state laws and this Policy.

In rare instances, the Title IX Coordinator may determine that an investigation or other resolution process should proceed, even though the written notice of allegations does not include the Complainant's identity. Where the Complainant's identity is unknown, the Title IX Coordinator must sign the Formal Complaint for an investigation to be initiated.

### 8.2 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 this Policy as follows:

### 8.2.1 Where the Complainant Seeks Resolution Under These Procedures

In any case where the Complainant reports Prohibited Conduct and requests resolution under this Policy, the Complainant must provide the Title IX Coordinator a Formal Complaint. Complainants are only able to file a Formal Complaint under this Policy if they are currently participating in, or attempting to participate in, the education programs or activities of the Law School. (See Section 2.3)

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

Where the Complainant does not wish to pursue a Formal Complaint under this Policy, 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 this Policy:

- Whether the Respondent has a history of violent behavior or is a repeat offender;
- Whether the incident represents escalation in unlawful conduct by the Respondent from previously noted behavior;
- Objective indicators that the Respondent may commit additional acts of violence;
- Whether the Respondent used a weapon or force;
- Whether the Complainant is a minor;
- Whether the Law School possesses other means to obtain evidence such as security footage; and
- Whether available information reveals a pattern of perpetration at a given location or by a particular person or group.

Regardless of whether the Complainant chooses to file Formal Complaint or participate in a formal grievance process pursuant to this Policy, the Title IX Coordinator will assist the Parties with Supportive Measures (See Section 9). Supportive Measures provided to the Complainant may not unreasonably burden the Respondent.

Where no Formal Complaint has been filed and a Supportive Measure directly impacts the Respondent, the Respondent will be provided with written notice of the report, which includes, as known, the date, time, and location of the alleged Prohibited Conduct and the underlying factual allegations, 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.

#### *8.2.2.1 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 this Policy, 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 Supportive Measures, 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 this Policy.

#### *8.2.2.2 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 this Policy, the Title IX Coordinator will promptly initiate the resolution process under this Policy by making a 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 Respondent.

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 this Policy. However, if the Complainant declines to participate in an investigation and/or the adjudicative process under this Policy, the Law School's ability to investigate meaningfully and respond to a report of Prohibited Conduct may be limited.

## 9. Supportive Measures

The Law School can provide Supportive Measures after a report has been filed. Following a report of Prohibited Conduct, the Complainant and Respondent will be provided information about a range of Supportive Measures available. Supportive Measures are non-disciplinary and non-punitive and may not unreasonably burden either Party in the absence of a finding of responsibility for Prohibited Conduct, as defined in this Policy. They are offered and implemented as appropriate, as reasonably available, and without fee or charge to either Party.

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 this Policy 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.

## 9.1 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;
- Mutual restrictions on contact between the Parties (“No-contact” orders).

## 9.2 Issuance of Supportive Measures

The Title IX Coordinator is responsible for issuing Supportive Measures and for coordinating their implementation with other school personnel.

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 either Party in the absence of a finding of responsibility for prohibited conduct, as defined in this Policy.

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

Where no Formal Complaint has been filed and a Supportive Measure impacts the Respondent, the Respondent will be provided with written notice of the report, which includes, as known, the date, time, and location of the alleged Prohibited Conduct and the underlying factual allegations, 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 this Policy. 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.

## 9.3 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 administrator<sup>5</sup>, 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.

If, based upon the request, the reviewing administrator is considering issuing, modifying, or removing a Supportive Measure, the reviewing administrator may 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 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.

## 10. Filing a Formal Complaint

### 10.1 Requirements of a Formal Complaint

A Formal Complaint must include:

- The Complainant's digital or physical signature, or an indication that the Complainant is the person filing the Formal Complaint;
- An allegation of Prohibited Conduct as defined under this Policy. This may include:
  - Where the incident(s) occurred,
  - What incident(s) occurred,
  - When the incident(s) occurred;
- Identity of Respondent, if known;
- A request for a resolution.

Formal Complaints may be made to the Title IX Coordinator by US Mail, email, or in person:

**Title IX Coordinator:** Chantelle Botticelli

By Phone: (518) 445-3346

By mail: Albany Law School Attn:  
Title IX Coordinator  
80 New Scotland Avenue Albany, NY 12208-3494

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<sup>5</sup> 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.



In person: Room 208, 1928 Building

By email: [titleix@albanylaw.edu](mailto:titleix@albanylaw.edu)

## 10.2 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 this Policy only if the Respondent meets the conditions of Section 2.4 above.

If the Complainant and/or Respondent no longer meets the conditions stated in Section 2 at the time of the Formal Complaint and the Law School is, thus, unable to pursue resolution under this Policy, 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.

## 10.3 Notice to Parties Upon the Issuance of a Formal Complaint

The Title IX Coordinator will draft and provide the Notice of Allegations to the Parties. Such notice will occur as soon as practicable after the institution receives a Formal Complaint of the allegations. Such notice will include:

- Notice of the Law School's Interim Procedures for the Resolution of Reports of Prohibited Conduct Within the Scope of Title IX; and
- 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;

The Parties will be notified by their institutional email accounts.

## 10.4 Timeframes

The timeframe for any resolution of a Formal Complaint begins with the filing of the Formal Complaint. All resolutions will be concluded within a reasonably prompt manner, ideally no more than ninety (90) days 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 Parties may request extensions that will be granted, if reasonable, at the discretion of the Title IX Coordinator in an Informal Resolution or the Investigator in an Investigation. 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.

## 11. Dismissal of A Formal Complaint

### 11.1 Mandatory Dismissal of a Formal Complaint

If any one of these elements set forth in Section 2 of this Policy are not met, the Title IX Coordinator will notify the Parties that the Formal Complaint is being dismissed for the purposes of this Policy. Each Party may appeal this dismissal using the procedure outlined in Section 17 below.

### 11.2 Discretionary Dismissal of a Formal Complaint

The Title IX Coordinator may dismiss a Formal Complaint brought under this Policy, 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 in or employed by the Law School; or,
- The 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 Section 17 below.

### 11.3 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.

### 11.4 Notice of Referral

If a Formal Complaint is dismissed under this Policy, the Law School may, in its discretion, 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 this Policy and referral of the allegations for further action under the appropriate Law School policy or procedure.

## 12. 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 this Policy 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.

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 this Policy and conduct that would cover prohibited conduct under other Law School policy or procedures, this Policy and accompanying procedures will be applied in the investigation and adjudication of all of the allegations.

## 13. Emergency Removal Provisions

### 13.1 Emergency Removal of a Student

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.

The decision to remove any Respondent on an emergency basis shall not be considered as evidence that any determination has been made regarding potential responsibility for violating this Policy.

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 13.3, below.

### 13.2 Administrative Leave of Non-Student Respondent

The Law School retains the authority to place a non-student, employee Respondent on administrative leave during a Title IX investigation.

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 13.3, below.

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

The Respondent 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.

## 14. 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 Informal Resolution process is a voluntary process in which a facilitator assists the Parties in resolving the allegations made by a Complainant through discussion rather than the more formal process of an investigation and hearing. 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, based upon a review of available information and to determine the appropriate terms.

Allegations that an employee has engaged in Prohibited Conduct toward a student will not be handled through the Informal Resolution process, and instead must be resolved through the investigation and hearing process.

### 14.1 Notice of Informal Resolution

When an Informal Resolution is requested, the Title IX Coordinator will provide the Complainant and Respondent written notice that includes:

- The specific allegation and the specific conduct that is alleged to have occurred;
- The requirements of the Informal Resolution process including the circumstances under which it precludes the Parties from resuming a Formal Complaint arising from the same allegations;
- Any consequences resulting from participating in the Informal Resolution process, including the records that will be maintained or could be shared;
- A statement indicating that the decision to accept a complaint does not presume that the conduct at issue has occurred, and that the Respondent is presumed not responsible, unless and until, at the conclusion of the investigation and adjudication processes, there is a determination of responsibility;
- An explanation that each Party may be accompanied by an Advisor and a support person of their choice, who may be a parent, friend, or attorney;
- The date and time of the initial meeting with the Title IX Coordinator, with a minimum of 2 days' notice;
- Information regarding Supportive Measures, which are available equally to the Respondent and to the Complainant.

### 14.2 Informal Resolution Process

Before the Informal Resolution process commences, both the Complainant and the Respondent must agree to explore Informal Resolution as a potential means of resolution. Informal Resolution will not

require, but may permit if agreed to by both Parties, face-to-face meetings, between the Complainant and the Respondent.

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 investigation and hearing process under this Policy.

The Title IX Coordinator will coordinate the Informal Resolution process and have access to all Law School records in the matter, including any records or reports prepared during an investigation. With the consent of the Parties, the Title IX Coordinator may serve as the Facilitator in the Informal Resolution process. The Parties may elect to use an external or another internal mediator or facilitator although the Law School will not be obligated to pay for all or a portion of any mediator's/facilitator's fees and expenses unless it is able to do so, as determined by the Dean.

The Facilitator will consult separately with both Parties, and the Harassment Committee, and consider the terms of a potential Informal Resolution agreement before affirming the resolution.

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 Respondent 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 this Policy.

If both Parties are satisfied with the Facilitator's recommendation, the matter will be resolved with a written agreement. The Facilitator will provide each Party, separately, with a copy of the proposed agreement for the Party to review, sign, and return.

Once the Parties have 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 and the underlying matter is considered resolved.

Records of any Informal Resolution will be maintained by the Title IX Coordinator.

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 is resolved pursuant to the investigation process, neither the Title IX Coordinator nor the Parties will disclose to the Hearing Panel or Appeal Panel, if applicable, either the fact that the Parties had participated in the Alternate Resolution process or any information learned during the process. The Title IX Coordinator will not be eligible to be a witness in the investigation or hearing.

### 14.3 Prohibition on Recording or Copying

Parties are prohibited from the authorized recording any piece of the Informal Resolution process or copying materials provided to them exclusively as part of the Informal Resolution process. Copying includes but is not limited to: audio or video recording, streaming, photographing, scanning, and transcribing.

## 15. Investigation of a Formal Complaint

### 15.1 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 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;
- Provide 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 a response to 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 this Policy 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.

### 15.1.1 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.

## 15.2 Notice of Investigation

The Notice of Investigation will include the following:

- Notice of the Law School's Title IX investigation 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 under this Policy.
- 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);
- The written notice must inform the parties of any provision in the recipient's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.
- If a Party declines to participate in the investigation, the Party may forfeit the opportunity at the hearing to offer evidence, including testimony.

## 15.3 Ongoing Notice

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 this Policy, 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.

## 15.4 Declining to Participate in the Investigation

Both the Complainant and the Respondent 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.

#### 15.4.1 Effect of Declining to Participate

If a Party declines to participate in the investigation, the Party may 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 Hearing Panel, in consultation with the Title IX Coordinator, may permit the Party to participate. If the Hearing Panel permits the Party to participate in the hearing, the Hearing Panel 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 Hearing Panel will also re-open the pre-hearing submission process, if appropriate, so that the Parties may respond to the new information.

#### 15.5 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.

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.

The Law School will not intentionally schedule meetings or hearings on dates where the Advisors 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 this Policy, and the Law School, though it cannot agree to extensive delays solely to accommodate the schedule of an Advisor, 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, and may offer the Party the opportunity to obtain a different Advisor.

#### 15.6 Investigative Interview Process

The Investigator will gather information from the Complainant, the Respondent, and any witnesses 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.

Parties and witnesses will receive transcripts of their own interviews. The Parties will be provided with transcripts, but not audio recordings, of all witness and other Party interviews as part of the investigative record.

The Parties may request to listen to audio recordings of their own interview, the 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.

### 15.7 Prohibition on Recording or Copying

Parties are prohibited from the unauthorized recording any investigative interview or copying materials provided to them exclusively as part of the investigative process. Copying includes but is not limited to: audio or video recording, streaming, photographing, scanning, and transcribing.

### 15.8 Preservation of Evidence and Tangible Materials

Preservation of information and tangible material relating to alleged Prohibited Conduct is essential for investigations under this Policy as well as law enforcement investigations. Therefore, all persons involved in this Policy, 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.

### 15.9 Evidentiary Materials

The Investigator will gather available relevant evidentiary materials and evidence that is directly related to the allegations in the Formal Complaint, 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 Parties will be given an equal opportunity to present information. This includes the opportunity to present fact, character or expert witnesses and other evidence that the Party believes tends to prove or disprove the allegations.

### 15.10 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 this Policy:

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.<sup>6</sup>

### 15.11 Obligation to Provide Truthful Information

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

### 15.12 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 subject to inspection and review 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:

- 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;

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<sup>6</sup> This includes but is not limited to medical records or privileged communications. Parties may provide a waiver if they would like the Investigator to consider their own information.

- 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.

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. Those written responses will be disclosed to the Parties and hearing panel, if applicable.

The Law School will provide copies of the Parties' written responses to the Investigator and to all Parties and their respective Advisors, if any.<sup>7</sup>

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.

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

### 15.13 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.

### 15.14 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.

#### 15.14.1 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.

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<sup>7</sup> See, 85 Fed. Reg. 30026, 30307 (May 19, 2020).

The Investigator may redact irrelevant information from the investigative report when that information is contained in documents or evidence that is/are otherwise relevant.<sup>8</sup>

The investigative report is not evidence.

#### 15.14.2. Review of the Final Investigative Record and Investigative Report

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.

## 16. Hearings

### 16.1 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 Hearing Panel. 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. That recording will be made available to the Parties for inspection and review.

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 Panel. Cross examination of the opposing Party(ies) and witnesses will be conducted by the Advisors for each Party.

Throughout the hearing, Parties and witnesses may never directly address each other.

### 16.2 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.

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.

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<sup>8</sup> See, 85 Fed. Reg. 30026, 30304 (May 19, 2020).

### 16.3 Presumption of Non-Responsibility and Standard of Proof

The Respondent will be presumed “not responsible” unless, and until, a majority of the Hearing Panel determines the Respondent is responsible.

The Hearing Panel will determine whether the Respondent is responsible by a majority vote using a Preponderance of the Evidence standard. This means that to find the Respondent responsible for any Prohibited Conduct or prohibited conduct under another Law School policy, a majority of the Hearing Panel must be satisfied, based upon the hearing record, that it is more likely than not that the Respondent committed all of the elements of the alleged prohibited conduct. If the Hearing Panel does not find the Respondent responsible under this Policy or any other relevant policy, it will dismiss the case. If the Hearing Panel finds that the Respondent is responsible under this Policy, or another relevant policy, it will consider appropriate sanctions and remedies.

### 16.4 The Hearing Panel

The Hearing Panel will be comprised members of at least two members the Law School’s Harassment Committee. The third member of the Panel 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.

### 16.5 Notice of Hearing

At the completion of an investigation, if a hearing is required, 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; 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 Panel members, if a Party believes that any member of the Hearing Panel has a conflict of interest or actual bias, the Party should notify the Title IX Coordinator. The notification must be in writing, made within two (2) business days of the notice, and include facts substantiating the claim of conflict. The Title IX Coordinator has discretion whether to remove a member of the Hearing Panel.

### 16.6 Request to Reschedule Hearing

Either Party may, due to an unforeseen emergency, 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 attendant difficulty of scheduling and rescheduling them in a timely manner, it may not be possible to accommodate all scheduling requests.

The Hearing Panel may also reschedule a hearing, without a request by the Parties, when there is reasonable cause to do so.

## 16.7 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 Panel 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 Panel permits a Party to introduce a newly discovered witness or evidence the Hearing Panel will reschedule or adjourn the hearing for the Investigator to investigate the newly discovered witness or evidence.

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

## 16.9 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 Respondent responsible.

## 16.10 Hearing Process and Format

### 16.10.1 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 staff necessary for the conduct of the hearing.

The Law School may still proceed with the live hearing in the absence of a Party or witness, and may reach a determination of responsibility in their absence, including through any evidence gathered that does not constitute a “statement” by that Party.<sup>9</sup>

Formal rules of evidence will not apply.

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

- Introduction by a member of the Hearing Panel. A member of the Hearing Panel will explain the hearing process, address any necessary procedural issues, and answer questions
- Testimony by the Complainant
- Testimony by the Respondent
- Testimony by any witnesses
- Closing statements by the Complainant followed by the Respondent

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<sup>9</sup> 85 Fed. Reg. 30026, 30361 (May 19, 2020).

### 16.10.2 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.

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 Section 16.7 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.

#### *16.10.2.1 Questioning by the Hearing Panel*

The Hearing Panel will question the Parties and the witnesses first. When the Hearing Panel has concluded questioning a particular Party or witness, each Parties' Advisor will then be provided an opportunity to examine or cross examine the such Party or witness.

#### *16.10.2.2 Cross Examination by the Advisor*

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.

If a Party does not have an Advisor who can be present for the hearing, the Law School will provide an Advisor for the purpose of cross-examining the other Party and witnesses.

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

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

If, following cross examination of a Party or witness by an Advisor, the Hearing Panel has any additional questions, they may pose those questions. The Advisors will then have one opportunity to pose additional questions of the testifying 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.

#### *16.10.2.5 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 Panel. A Party's waiver of cross-examination does not eliminate the ability of the Hearing Panel to use statements made by the Party.

### **16.11 Determination on Findings of Responsibility**

At the conclusion of the hearing, 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.

#### **16.11.1 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.

#### **16.11.2 Determination of Sanctions after a Finding of Responsibility**

##### *16.11.2.1 Student Sanctions*

A Hearing Panel that finds a student Respondent 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 Title IX Coordinator 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 Respondent 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 Title IX Coordinator 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 Respondent;
- Prior misconduct by the Respondent, including the Respondent'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.

In matters involving student Respondents, the Hearing Panel may impose one or more appropriate sanctions and remedies provided in relevant policies of the Law School. Sanctions that may be imposed on students include, but are not limited to, a written warning, a written reprimand, probation, suspension, and expulsion.

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.

#### *16.11.2.2 Employee Sanctions*

A Hearing Panel that finds a member of the staff responsible will refer the matter to the Vice President for Administration and Finance for imposition of sanction and remedies. Sanctions that may be imposed on employees include, but are not limited to, a written warning, a written reprimand, administrative leave (paid or unpaid) and expulsion

A Hearing Panel that finds a member of the faculty responsible will refer the matter to the Dean and President for imposition of sanction and remedies.

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.

### **16.12 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 this Policy 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 the law school imposes on the Respondent; and
6. To the Complainant only, a statement of, and rationale for, whether remedies designed to restore or preserve equal access to the law school’s education program or activity will be provided by the law school to the Complainant; and
7. The Law School’s procedures and the permitted reasons for the Complainant and Respondent to appeal (described below in “Appeal”).

### 16.13 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.

### 16.14 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 Section 17 below, or if an appeal is not filed, the date on which the opportunity to appeal expires.

### 16.15 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, and the Hearing Panel. Such failure will not constitute grounds for appeal.

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 this Policy 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.

### 16.16 Prohibition on Recording

Individuals appearing before the Hearing Panel, whether as a Party or witness, are prohibited from the unauthorized recording any portion of the hearing or copying materials provided to them exclusively as part of the hearing. Copying includes but is not limited to: audio or video recording, streaming, photographing, scanning, and transcribing.

Hearing Panel members are also prohibited from recording any portion of the hearing or making unauthorized copies of materials provided to them exclusively as part of the hearing process. Immediately after issuing the Hearing Panel decision, Hearing Panel members will destroy any notes they took during the hearing.

## 17. 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 Hearing Panel rendered a decision that is clearly erroneous;
- 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, including images or attachments, 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 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 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. The non-appealing Party will be entitled to submit an appeal statement meeting the same requirements as described above for the appealing Party.

Appeals will be decided by the Appeal Panel appointed by the Dean who will be free of conflict of interest and bias, and did not serve as Investigator, Title IX Coordinator, or member of the Hearing Panel in the same matter. Members of the Appeal Panel will receive the training required under the Final Rule.

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 for clarification or reconsideration consistent with the Appeal Panel’s decision, if doing so would assist with a timely, practicable, and efficient resolution of the case;
- Remand a case for a new hearing to either the original Hearing Panel or a newly composed Hearing Panel; or
- Remand a case for a new or additional investigation, followed by an adjudication consistent with this Policy, to either the original investigator or to a new investigator.

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

## 18. 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 or pursuant to an Informal Resolution agreement;
- Suspension after a finding of responsibility or pursuant to an Informal Resolution agreement; and
- Withdrawal from the Law School while a Formal Complaint is pending.

When a notation is made on a student transcript, the student will receive notice of the notation. If the underlying finding of responsibility is vacated for any reason, the transcript notation will be removed. Transcript notations following suspensions and withdrawals may be appealed.