

## **Appendix A**

### **Student Conduct Code Protocol for Alleged Violations of Part B (Title IX) of the UIS Sexual Misconduct Policy**

#### **I. Resolution of Formal Complaints under Part B of the UIS Sexual Misconduct Policy**

This Conduct Code Protocol applies to Title IX Sexual Harassment in a UIS Education Program or Activity allegedly occurring against a person in the United States, as well as related allegations of Retaliation. The terms “Title IX Sexual Harassment”, “Education Program or Activity”, and “Retaliation” are defined in Appendix A of the Sexual Misconduct Policy.

#### **II. Hearing**

Following an investigation, unless the parties voluntarily agree to resolve a Formal Complaint (as defined in the Sexual Misconduct Policy) using an informal complaint resolution process, all Formal Complaints under Part B of the Sexual Misconduct Policy are resolved through a live hearing which allows both parties to participate equally.

Live hearings may be conducted with all parties physically present in the same geographic location or, at the Hearing Panel’s discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other. The hearing shall be closed to the public and will be recorded. The recording will be made available to the parties for inspection or review.

When all parties are physically present for the hearing in the same location, any party may request that the parties be located in separate rooms with technology enabling the Hearing Panel and the parties to simultaneously see and hear all testimony.

The Respondent is presumed not responsible for violating the Sexual Misconduct Policy and the Hearing Panel will make a Determination Regarding Responsibility at the conclusion of the grievance process. The Hearing Panel’s determination will be based upon the relevant evidence presented at the hearing. The standard of proof the Hearing Panel will use is preponderance of the evidence (more likely than not).

Where a hearing involves more than one Complainant or more than one Respondent, references in this section to the singular “party,” “Complainant,” or “Respondent” include the plural, as applicable.

##### **A. Notice**

At least 14 days prior to the hearing the parties will receive written notice of the hearing date, time, location, participants, Hearing Panelists, and charges. The notice shall include:

- i. A statement that knowingly making false statements or knowingly submitting false information during the hearing process may result in discipline. A determination of responsibility, alone, is not sufficient to conclude that false information was intentionally provided;
- ii. 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;
- iii. The names of the witnesses and copies of relevant documents, including the Report of Investigation; and
- iv. A copy or a link to the Sexual Misconduct Policy and this protocol.

## **B. Advisors**

- i. The parties may have an advisor of their choice present during the hearing, who may be, but is not required to be, an attorney.
- ii. If the party does not have an advisor present at the hearing, UIS will provide without fee or charge to that party, the names of advisors available to ask cross-examination questions at the hearing on behalf of the party. After the party chooses an advisor from the list, the advisor will be given a reasonable amount of time to meet with the party to discuss cross-examination questions. UIS-provided advisors are not attorneys and do not provide legal or other advice. Their role is limited to asking cross-examination questions on behalf of the party.
- iii. Parties requiring a UIS-provided advisor should inform the Dean of Students or their designee of that fact at least 3 days before the hearing to allow the list of available advisors to be assembled.
- iv. An advisor may quietly consult with the parties but may not participate in the hearing beyond cross-examining witnesses.
- v. If a party chooses not to participate in a hearing, UIS will appoint an advisor for the party to ask cross-examination questions on behalf of the party.
- vi. Advisors shall comply with these procedures and the directions of the Hearing Panel Chair. If the advisor fails to comply with these procedures and/or directives from the Hearing Panel Chair, they may be asked to leave the hearing. If cross-examination has not happened, the hearing will be adjourned until a new advisor is appointed to perform cross-examination of witnesses on behalf of the party. If cross-examination of

the witnesses has taken place, the hearing will proceed. Formal rules of legal procedure and evidence do not apply.

### **C. Hearing Panel**

- i. Each Hearing Panel shall consist of one member of the faculty, one staff member, one student, and a non-voting Dean of Students designee. The faculty, staff, and student member of the Hearing Panel shall be members of the Student Discipline Committee. The Dean of Students designee shall serve as the Chair of the Hearing Panel. All panel decisions are by simple majority vote.
- ii. Hearing panel members must be free from conflicts of interest and bias for or against Complainants or Respondents generally or an individual Complainant or Respondent. A conflict of interest includes having participated previously in the complaint resolution process for the particular complaint being considered.
- iii. Panel members having such a conflict of interest or bias must recuse themselves and notify the Dean of Students so that a substitute can be designated.
- iv. Either party concerned that a panel member might have a conflict of interest or bias may in writing, explain the basis for the concern, and request a substitution of that official. Such requests must be received at least three days before the hearing to allow an appropriate substitution.
- v. If the Dean of Students is notified in writing that there is a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent, or a faculty, staff, or student member is unable to serve, an alternate may be appointed who is not a member of the Student Discipline Committee. The alternate must receive all required training to serve on the Hearing Panel.

Before serving on a Hearing Panel, all members, including the chair, must receive a minimum of 8 hours of training, including on topics required by applicable state and federal law, as well as on any technology to be used at a live hearing.

### **D. Testimony and Other Evidence**

- i. All evidence included in the Report of Investigation shall be subject to the parties' inspection and review at the hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

- ii. The parties have an equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.
- iii. At the hearing, the Hearing Panel must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally.
- iv. Only relevant cross-examination and other questions may be asked of a party or witness. Before a Complainant, Respondent, or witness answers a cross-examination or other question, the Hearing Panel Chair must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.
- v. Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.
- vi. The Hearing Panel cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.
- vii. A question or evidence that constitutes, or seeks disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege, is not permitted and will not be considered by the Hearing Panel.

#### **E. Hearing Outline**

- i. Opening Statement by Complainant
- ii. Opening Statement by Responding Party
- iii. Title IX Investigator's testimony
- iv. Cross-Examination by the Complainant's Advisor
- v. Cross-Examination by the Respondent's Advisor
- vi. Panelists Question the Title IX Investigator
- vii. Panel calls witnesses to testify
- viii. Panelists question the witnesses
- ix. Cross-examination by Complainant's Advisor

- x. Cross-examination by Respondent's Advisor
- xi. Additional evidence presented by Complainant
- xii. Additional witness testimony for the Complainant
- xiii. Cross-Examination of the Witnesses by the Respondent's Advisor
- xiv. Panelists Question the Witnesses
- xv. Additional evidence presented by the Respondent
- xvi. Additional witnesses for the Respondent
- xvii. Cross-Examination of the Witnesses by the Complainant's Advisor
- xviii. Panelists Questions of the Witnesses
- xix. Closing Statement by the Complainant
- xx. Closing Statement by the Respondent
- xxi. Hearing closes for panel deliberations

#### **F. Hearing Panel Deliberations**

The Hearing Panel shall deliberate in closed session. All panel decisions shall be by simple majority vote, with each member's vote carrying equal weight.

The Hearing Panel will objectively evaluate all relevant evidence presented at the hearing – including both inculpatory and exculpatory evidence. Credibility determinations may not be based on a person's status as a Complainant, Respondent, or Witness.

The Respondent is presumed not responsible for the alleged conduct until a Determination Regarding Responsibility is made at the conclusion of the grievance process. The Hearing Panel will reflect its findings in the Determination Regarding Responsibility.

If the Hearing Panel finds, by a preponderance of the evidence, that the Respondent committed the alleged Title IX Sexual Harassment, it may impose none, any, or any combination of the sanctions set forth in Section IV of the Student Conduct Code, as appropriate.

The Hearing Panel may seek advice from the Office of University Counsel at any time during its proceedings.

The Hearing Panel must document its decisions in its written Determination Regarding Responsibility.

#### **G. Determination Regarding Responsibility**

Within 7 days of the hearing, unless for good cause, the Hearing Panel shall submit a written Determination Regarding Responsibility to the Dean of Students. The Determination Regarding Responsibility must include:

- i. Identification of the allegations potentially violating the Sexual Misconduct Policy;

- ii. 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;
- iii. Findings of fact supporting the determination;
- iv. Conclusions regarding the application of the UIS Code of Conduct or other applicable policy to the facts;
- v. A statement of, and rationale for, the result as to each allegation, including a Determination Regarding Responsibility, any disciplinary sanctions the Hearing Panel imposes on the Respondent, and whether remedies designed to restore or preserve equal access to the education program or activity will be provided by UIS to the Complainant; and
- vi. The procedures and permissible bases for the Complainant and Respondent to appeal.

The Dean of Students or designee will provide the Determination of Responsibility to the parties simultaneously.

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

### **III. Appeals**

The determination of the Hearing Panel is final and binding upon the Respondent unless the Respondent and/or the Complainant submits a written appeal to the Vice Chancellor for Student Affairs or their designee within 7 days of receiving the Determination Regarding Responsibility. An appeal may be submitted by email, mail, or hand delivery to the Vice Chancellor for Student Affairs or their designee. Appeals must include all documentation supporting the appeal. The Vice Chancellor for Student Affairs or their designee may grant an appropriate extension of time for submitting an appeal upon written request if there is good cause shown. The parties shall be simultaneously notified in writing of any approved extension of time for filing an appeal and the reason therefore.

The Respondent and/or the Complainant may appeal based upon the following grounds:

- A. Procedural irregularity that affected the outcome of the matter;

- B. New evidence that was not reasonably available at the time the determination regarding responsibility was made that could affect the outcome of the matter;
- C. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter; and
- D. The sanction is disproportionate with the violation.

Once an appeal is submitted by either party, the Vice Chancellor for Student Affairs or their designee will notify the other party in writing that an appeal has been filed. The non-appealing party will have 7 days to submit a written statement in response to the appeal.

The Vice Chancellor for Student Affairs or their designee shall review the appeal within 14 days of receiving the appeal and any statement in response from the other party, or the time for submission of the response has expired. Before taking action on the appeal, the Vice Chancellor for Student Affairs or their designee shall consider the appeal, any statement submitted in response by the other party, and all evidence considered by the Hearing Panel. The burden of persuasion rests with the appellant to establish the grounds for appeal.

The Vice Chancellor for Student Affairs or their designee may deny the appeal or grant the appeal in whole or in part and shall issue a written decision simultaneously to both parties within 7 days of the decision describing the result of the appeal and the rationale for the result. The notice shall specify that the decision of the Vice Chancellor for Student Affairs or their designee is final and that no further appeals are permitted.

If there are processing delays for any reason, including the granting of a party's request for an extension for good cause, the Complainant and the Respondent shall be given simultaneous written status updates that include the reason for any delay.

#### **IV. Recordkeeping**

The audio recording of the hearing will be available to the parties for inspection and review as soon after the hearing as reasonably possible.

UIS will retain the Determination Regarding Responsibility, all evidence presented at the hearing, any appeal and the result therefrom, and the audio recording of the hearing for 7 years. For other records retained relating to Title IX Sexual Harassment complaints, see the UIS Sexual Misconduct Policy.

Update: October 2021