

# PROCEDURES FOR ALLEGED VIOLATION OF PART B (TITLE IX) OF THE UIS SEXUAL MISCONDUCT POLICY BY EMPLOYEES

## I. RESOLUTION OF FORMAL COMPLAINTS UNDER PART B OF THE UIS SEXUAL MISCONDUCT POLICY

The University of Illinois Springfield (UIS) is committed to ensuring that its working environments are free from Title IX Sexual Harassment and other Sexual Misconduct.

These procedures apply to allegations that a UIS employee has committed Title IX Sexual Harassment in a UIS Education Program or Activity occurring against a person in the United States, as well as related allegations of Retaliation.

For the purposes of these procedures, a UIS employee is any individual who performs services for UIS in exchange for pay, benefits, or University affiliate status (including Graduate and Teaching Assistants, but excluding student employees).

Defined terms in these procedures begin with capital letters and have the meaning ascribed to them in Appendix A to the Sexual Misconduct Policy.

## II. HEARINGS

- A. General. Following an investigation, unless the parties voluntarily agree to resolve a Formal Complaint 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.
1. Live hearings may be conducted with all parties physically present in the same geographic location or, at the Hearing Decision-Maker'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.
  2. 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 Decision-Maker and the parties to simultaneously see and hear all testimony.
  3. The Respondent is presumed not responsible for violating the Sexual Misconduct Policy and the Hearing Decision-Maker will make a Determination Regarding Responsibility at the conclusion of the hearing.
  4. The Hearing Decision-Maker's Determination Regarding Responsibility will be based upon the relevant evidence presented at the hearing. The standard of proof the Hearing Decision-Maker will use is preponderance of the evidence.

5. Where a hearing involves more than one Complainant or more than one Respondent, references in these procedures to the singular “party,” “Complainant,” or “Respondent” include the plural, as applicable.
- B. Initiation. Upon completion of the investigation, the Investigator submits the Report of Investigation to the Senior Director of Human Resources or their designee. The Senior Director of Human Resources or their designee appoints a Hearing Decision-Maker to convene the live hearing and provides the Hearing Decision-Maker with the Report of Investigation and any written responses submitted by the parties.
- C. Notice. At least ten days prior to the Hearing, the parties will receive written notice of the hearing date, time, location, participants, Hearing Decision-Maker, and charges. The notice shall include:
1. 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;
  2. 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;
  3. The names of the witnesses and copies of relevant documents; and,
  4. A copy or a link to the Sexual Misconduct Policy and these procedures.
- D. Advisors. The parties may have an advisor of their choice present during the hearing, who may be, but is not required to be, an attorney.
1. If a 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.
  2. Parties requiring a UIS-provided advisor should inform UIS Human Resources of that fact at least 3 days before the hearing to allow the list of available advisors to be assembled.
  3. 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.
  4. Advisors shall comply with these procedures and the directions of the Hearing Decision-Maker. If the advisor fails to comply with these procedures and/or directives from the

Hearing Decision-Maker, 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.

E. Hearing Decision-Maker.

1. The Hearing Decision-Maker is responsible for coordinating and overseeing the hearing and issuing the Determination Regarding Responsibility.
2. Before serving as a Hearing Decision-Maker, the individual must receive appropriate training, including on topics required by applicable state and federal law, as well as on any technology to be used at the hearing.
3. The Hearing Decision-Maker 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.
4. Hearing Decision-Makers having such conflicts of interest or bias must recuse themselves and notify the Senior Director of Human Resources so that a substitute can be designated.
5. Either party concerned that a Hearing Decision-Maker 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.
6. In the event a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent, is established, or a Hearing Decision-Maker is unable to serve for any reason, the Senior Director of Human Resources will appoint a substitute. The substitute must receive all required training before serving as the Hearing Decision-Maker.

F. Testimony and Other Evidence.

1. 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.
2. The parties have an equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.
3. At the hearing, the Hearing Decision-Maker 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.

4. 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 Decision-Maker must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.
5. 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.
6. The Hearing Decision-Maker 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.
7. 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 Decision-Maker.

#### G. Hearing Outline

1. Opening statement by Complainant
2. Opening statement by Respondent
3. Investigator's testimony
4. Cross-examination by the Complainant's advisor
5. Cross-examination by the Respondent's advisor
6. Hearing Decision-Maker questions the Investigator
7. Hearing Decision-Maker calls witnesses to testify
8. Hearing Decision-Maker questions the witnesses
9. Cross-examination by Complainant's advisor
10. Cross-examination by Respondent's advisor
11. Additional evidence presented by Complainant
12. Additional witness testimony for the Complainant
13. Cross-examination of the witnesses by the Respondent's advisor
14. Hearing Decision-Maker questions the witnesses
15. Additional evidence presented by the Respondent
16. Additional witnesses for the Respondent
17. Cross-examination of the witnesses by the Complainant's advisor
18. Hearing Decision-Maker questions of the witnesses
19. Closing statement by the Complainant

20. Closing statement by the Respondent
21. Hearing closes for deliberations

#### H. Hearing Decision-Maker Deliberations

1. The Hearing Decision-Maker shall deliberate in closed session.
2. The Hearing Decision-Maker 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.
3. 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 Decision-Maker will reflect the findings in the Determination Regarding Responsibility.
4. The Hearing Decision-Maker may seek advice from the Office of University Counsel at any time during the proceedings.
5. If the Hearing Decision-Maker finds, by a preponderance of the evidence, that the Respondent committed the alleged Title IX Sexual Harassment, the Hearing Decision-Maker will communicate the findings, together with the Report of Investigation and any relevant evidence introduced at the hearing, to the Senior Director of Human Resources for the imposition of appropriate sanctions. The Senior Director of Human Resources may impose none, any, or any combination of the sanctions applicable to the Respondent's employee group.
6. The Hearing Decision-Maker must document hearing decisions, as well as any sanctions imposed by the Senior Director of Human Resources, in the written Determination of Responsibility.

#### I. **Determination Regarding Responsibility**

1. Within 7 days of the hearing, unless for good cause, the Hearing Decision-Maker shall submit a written Determination Regarding Responsibility to the Senior Director of Human Resources or their designee. The written Determination Regarding Responsibility must include:
  - a. Identification of the allegations potentially violating the Sexual Misconduct Policy;
  - b. A description of the procedural steps taken from the receipt of the Formal Complaint through the Determination Regarding Responsibility, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
  - c. Findings of fact supporting the Determination Regarding Responsibility;

- d. Conclusions regarding the application of the Sexual Misconduct Policy to the facts;
  - e. A statement of, and rationale for, the result as to each allegation, including a Determination Regarding Responsibility, any disciplinary sanctions imposed 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
  - f. The procedures and permissible bases for the Complainant and Respondent to appeal.
2. The Senior Director of Human Resources or designee will provide the written Determination Regarding Responsibility to the parties simultaneously.
  3. The Determination Regarding Responsibility becomes final either on the date that the Senior Director of Human Resources 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.

## **V. APPEALS**

- A. The determination of the Hearing Decision-Maker regarding responsibility is final and binding upon the Respondent unless the Respondent and/or the Complainant submits a written appeal to the Chancellor's designee within 7 days of receiving the written Determination Regarding Responsibility.
- B. An appeal may be submitted by email, mail, or hand delivery to the designated official. An appeal must include all documentation supporting the appeal, including a written statement explaining the basis for appeal. The Chancellor's 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.
- C. The Respondent and/or the Complainant may appeal based upon the following grounds:
  1. Procedural irregularity that affected the outcome of the matter;
  2. New evidence that was not reasonably available at the time the Determination Regarding Responsibility or decision regarding dismissal was made that could affect the outcome of the matter; and
  3. The Title IX Coordinator, Investigator, or Hearing Decision-Maker had a conflict of interest or bias for or against complainants or respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.
- D. The burden of persuasion rests with the appellant to establish the grounds for the appeal.

- E. Once an appeal is submitted by either party, the Chancellor's 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.
- F. The Chancellor's designee shall appoint an appeal officer who shall be responsible for deciding the appeal based on the grounds listed above.
  - 1. The appeal officer must have the requisite training and cannot be the same person as the Hearing Decision-Maker, the Investigator, or the Title IX Coordinator.
  - 2. The appeal officer 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 deciding the appeal, the appeal officer shall consider the appeal, any statement submitted in response by the other party, and all evidence considered by the Hearing Decision-Maker.
  - 3. The appeal officer may deny the appeal, grant the appeal in whole or in part, or remand the complaint to the Hearing Decision-Maker for additional proceedings, 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 appeal officer is final and that no further appeals are permitted.
  - 4. If there are processing delays for any reason, including the granting of a party's request for an extension, the Complainant and the Respondent shall be given simultaneous written status updates that include the reason for any delay.

## **VI. UNIVERSITY RESPONSE TO THE DETERMINATION REGARDING RESPONSIBILITY**

Once the Determination Regarding Responsibility is final, the Senior Director of Human Resources or their designee will determine whether any further action needs to be taken. Action can include, but is not limited to, imposing sanctions and/or the proceedings necessary to carrying them out, up to and including dismissal, discharge, or the commencement of tenure revocation procedures.