

## **Grievance Policy for Addressing Formal Complaints of Sexual Harassment 2020 Rule - Under the Title IX Regulations**

### **I. Policy Statement**

Title IX of the Educational Amendments of 1972 prohibits any person in the United States from being discriminated against based on 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. This policy 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.

Columbia-Greene Community College remains committed to addressing any violations of its policies, even those not meeting the narrow standards defined under the Title IX Final Rule effective August 14, 2020. Columbia-Greene Community College has a Code of Conduct that defines certain behavior as a violation of campus policy, and a separate Sexual Harassment Prevention/Discrimination Prevention Policy that addresses the types of sex-based offenses constituting a violation of campus policy, and the procedures for investigating and adjudicating those sex-based offenses.

### **II. Reason for Policy**

In recent years, "Title IX" cases have become a shorthand for any campus disciplinary process involving sex discrimination, including those arising from sexual harassment and sexual assault. But under the Final Rule, Columbia-Greene Community College must narrow both the geographic scope of its authority to act under Title IX and the types of "sexual harassment" that it must subject to its Title IX investigation and adjudication process. **Only** incidents falling within the Final Rule's definition of sexual harassment will be investigated and, if appropriate, brought to a live hearing through this Title IX Grievance Policy as defined below.

### **III. Applicability of the Policy**

This policy only applies to formal complaints of sexual harassment brought on or after August 14, 2020. The elements contained in this policy apply to anyone (employees, students, and prospective students) who are currently participating in or attempting to participate in any programs of Columbia-Greene Community College. This policy only applies to incidents that occur within the United States and in a Columbia-Greene Community College Educational Program or Activity, as described under "definitions."

The requirements and protections of this 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>.

## **Revocation by Operation of Law**

Should any portion of the Title IX Final Rule, 85 Fed. Reg. 30026 (May 19, 2020), be stayed or held invalid by a court of law, or should the Title IX Final Rule be withdrawn or modified to not require the elements of this policy, this policy, or the invalidated elements of this policy, will be deemed revoked as the publication date for the opinion or order and for all reports after that date of opinion or order publication. Should the Title IX Grievance Policy be revoked in this manner, any conduct covered under the Title IX Grievance Policy shall be investigated and adjudicated under other existing policies.

## **V. Contact Information for the Title IX Coordinator:**

### **Melissa S. Fandozzi**

Director of Human Resources/Title IX Coordinator and Affirmative Action Officer

Columbia-Greene Community College

4400 Route 23 | Hudson, NY 12534

[melissa.fandozzi@sunycgcc.edu](mailto:melissa.fandozzi@sunycgcc.edu)

518-697-6400, extension 6337

## **VI. Definitions**

**Covered Sexual Harassment:** For the purposes of this Title IX Grievance Policy, “covered sexual harassment” includes any conduct based on sex that satisfies one or more of the following:

1. An employee conditioning educational benefits on participation in unwelcome sexual conduct (i.e., quid pro quo).
2. Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the educational institution’s education program or activity.
3. Sexual assault (as defined in the Clery Act), which includes any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent.
4. Dating violence (as defined in the Violence Against Women Act (VAWA) amendments to the Clery Act), which includes any violence committed by a person: (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship; (ii) The type of relationship; (iii) The frequency of interaction between the persons involved in the relationship.
5. Domestic violence (as defined in the VAWA amendments to the Clery Act), includes any felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under New York State domestic or family violence laws or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of New York State.
6. Stalking (as defined in the VAWA amendments to the Clery Act), meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to-- (A) fear for their safety or the safety of others; or (B) suffer substantial emotional distress.

Note that conduct that does not meet one or more of these criteria may still be prohibited under: “Sexual Assault, Domestic Violence and Stalking Prevention”, “Prevention of Sexual Harassment and Other Types of

Harassment and Discrimination”, and “Student Conduct and Disciplinary Procedures “The Code” and may be subject to disciplinary action.

### **Consent**

For the purposes of this Title IX Grievance Policy, “affirmative consent” is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, if those words or actions create clear permission regarding willingness to engage in 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.

Additionally:

- Consent to any sexual act or prior consensual 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 cannot otherwise consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants maybe 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.

### **Education Program or Activity**

For the purposes of this Title IX Grievance Policy, Columbia-Greene Community College’s “education program or activity” includes:

- Any on-campus premises
- Any off-campus premises that Columbia-Greene Community College has substantial control over. This includes buildings or property owned or controlled by a recognized student organization.
- Activity occurring within computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of Columbia-Greene Community College’s programs and activities over which the College has substantial control.

### **Formal Complaint**

For the purposes of this Title IX Grievance Policy, “formal complaint” means a document – including an electronic submission - filed by a complainant with a signature or other indication that the complainant is the person filing the formal complaint, or signed by the Title IX Coordinator, alleging sexual harassment against a respondent about conduct within Columbia-Greene Community College’s education program or activity and requesting initiation of the procedures consistent with the Title IX Grievance Policy to investigate the allegation of sexual harassment.

## **Complainant**

For the purposes of this Title IX Grievance Policy, Complainant means any individual who has reported being or is alleged to be the victim of conduct that could constitute covered sexual harassment as defined under this policy.

## **Respondent**

For the purposes of this Title IX Grievance policy, Respondent means any individual who has been reported to be the perpetrator of conduct that could constitute covered sexual harassment as defined under this policy.

## **Relevant evidence and questions**

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

“Relevant” evidence and questions do not include the following types of evidence and questions, which are deemed “irrelevant” at all stages of the Title IX Grievance Process:

- Evidence and questions about the complainant’s sexual predisposition or prior sexual behavior unless:
  - They are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or
  - 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).
- Evidence and questions that constitute, or seek disclosure of, information protected under a legally recognized privilege.
- Any party’s medical, psychological, and similar records unless the party has given voluntary, written consent. 85 Fed. Reg. 30026, 30294 (May 19, 2020).

## **Privacy vs. Confidentiality**

Consistent with “Code of Conduct” references made to *confidentiality* refer to the ability of identified confidential resources to not report crimes and violations to law enforcement or college officials without permission, except for extreme circumstances, such as a health and/or safety emergency or child abuse. References made to *privacy* mean offices and employees who cannot guarantee confidentiality but will maintain privacy to the greatest extent possible, and information disclosed will be relayed only as necessary to investigate and/or seek a resolution and to notify the Title IX Coordinator or designee, who is responsible for tracking patterns and spotting systemic issues. Columbia-Greene Community College will limit the disclosure as much as practicable, even if the Title IX Coordinator determines that the request for confidentiality cannot be honored.

## **Disability Accommodations**

This Policy does not alter any institutional obligations under federal disability laws including the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Parties may request reasonable accommodations for disclosed disabilities to the Title IX Coordinator at any point before or during the Title IX Grievance Process that do not fundamentally alter the Process. The Title IX Coordinator will not affirmatively provide disability accommodations that have not been specifically requested by the Parties, even where the Parties may be receiving accommodations in other institutional programs and activities.

## **VII. Procedures**

### **Making a Report Regarding Covered Sexual Harassment to the Institution**

Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report.

#### **Contact Information for the Title IX Coordinator:**

Name: Melissa S. Fandozzi  
Title: Director of Human Resources  
Office Address: Main Building, Room 207A  
Email Address: [melissa.fandozzi@sunycgcc.edu](mailto:melissa.fandozzi@sunycgcc.edu)  
Telephone Number: 518-697-6400, x 6337

Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address listed for the Title IX Coordinator.

### **Non-Investigatory Measures Available Under the Title IX Grievance Policy**

#### **Supportive Measures**

Complainants (as defined above), who report allegations that could constitute covered sexual harassment under this policy, have the right to receive supportive measures from Columbia-Greene Community College regardless of whether they desire to file a complaint. Supportive measures are non-disciplinary and non-punitive. These may include, but are not limited to:

- On and off-campus counseling.
- Extensions of deadlines or other course-related adjustments.
- Modifications of work or class schedules.
- Restrictions on contact between the parties (no contact orders);
- Changes in work or housing locations.
- Leaves of absence.
- Increased security and monitoring of certain areas of the campus.
- Referrals to community-based support and advocacy networks.

#### **Emergency Removal**

Columbia-Greene Community College retains the authority to remove a respondent from its program or activity on an emergency basis, where the College (1) undertakes an individualized safety and risk analysis and (2) determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of covered sexual harassment justifies a removal.

If Columbia-Greene Community College determines such removal is necessary, the respondent will be provided notice and an opportunity to challenge the decision immediately following the removal. The

individual who hears the challenge to the removal determination will be free from bias and conflict of interest and not be involved in any decision regarding responsibility or appeal of that decision regarding responsibility. The appeal for an emergency removal will be conducted by:

- Andrew Ledoux, Dean of Student Development  
Main Building, Room 205  
andrew.ledoux@sunycgcc.edu  
518-697-6400 x 6320

### **Administrative Leave**

Columbia-Greene Community College retains the authority to place a non-student employee respondent on administrative leave during the Title IX Grievance Process. This Grievance Policy does override Collective Bargaining Agreements.

### **The Title IX Grievance Process**

#### **Filing a Formal Complaint**

The timeframe for the Title IX Grievance Process begins with the filing of a Formal Complaint. The Grievance Process will be concluded within a reasonably prompt manner, and no longer than ninety (90) calendar 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 procedure for applying for extensions is described later in this policy.

To file a Formal Complaint, a complainant must provide the Title IX Coordinator with a written, signed complaint describing the facts alleged. Complainants are only able to file a Formal Complaint under this Policy if they are currently participating in, or attempting to participate in, the education programs or activities of the College including as an employee. For complainants of alleged sexual harassment who do not meet these criteria, the College will utilize existing procedures in the "Complaint Procedures for Unlawful Discrimination/Harassment" or "Student Code of Conduct".

If a complainant does not wish to make a Formal Complaint, the Title IX Coordinator may determine a Formal Complaint is necessary. Columbia-Greene Community College will inform the complainant of this decision in writing, and the complainant need not participate in the process further but will receive all notices issued under this Policy and Process.

Nothing in the Title IX Grievance Policy or other College policies and procedures prevents a complainant from seeking the assistance of state or local law enforcement alongside the appropriate on-campus process.

#### **Multi-Party Situations**

The institution may consolidate Formal Complaints alleging covered sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of covered sexual harassment arise out of the same facts or circumstances.

### **Determining Jurisdiction**

The Title IX Coordinator, or designee without a conflict of interest or bias, will determine if the Title IX Grievance Process should apply to a Formal Complaint. The Process will apply when all the following elements are met, in the reasonable determination of the Title IX Coordinator:

1. The conduct is alleged to have occurred on or after August 14, 2020.
2. The conduct is alleged to have occurred in the United States.
3. The conduct is alleged to have occurred in Columbia-Greene Community College's education program or activity; and
4. The alleged conduct, if true, would constitute covered sexual harassment as defined in this policy.

If all the elements are met, Columbia-Greene Community College will investigate the allegations according to the Grievance Process.

### **Mandatory Dismissal**

If any one of these elements are **not** met, the Title IX Coordinator or designee without a conflict of interest or bias will notify the parties that the Formal Complaint is being dismissed for the purposes of the Title IX Grievance Policy. Each party may appeal this dismissal using the procedure outlined in "Appeals," below.

### **Allegations Potentially Falling Under Two Policies:**

If the alleged conduct, if true, includes conduct that would constitute covered sexual harassment and conduct that would not constitute covered sexual harassment, the Title IX Grievance Process will be applied in the investigation and adjudication of all the allegations.

### **Discretionary Dismissal**

The Title IX Coordinator or designee without a conflict of interest or bias may dismiss a Formal Complaint brought under the Title IX Grievance 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 or employed by the College; or,
- If specific circumstances prevent the College from gathering evidence sufficient to reach a determination regarding the Formal Complaint or allegations within the Formal Complaint.

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

### **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 Title IX 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.

Upon dismissal of charges under this policy, the College retains discretion to utilize College policies and the Code of Conduct to determine if a violation of other policies has occurred. If so, the College can choose to

follow the procedures outlined for policy/conduct violations to further the investigation and determine sanctions, if appropriate.

### **Notice of Allegations**

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

If, during 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 covered sexual harassment falling within the Title IX Grievance 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 notified by their institutional email accounts if they are a student or employee, and by other reasonable means if they are neither.

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

### **Contents of Notice**

The Notice of Allegations will include the following:

- Notice of the institution's Title IX Grievance Process and a hyperlink to a copy of the process.
- Notice of the allegations potentially constituting covered sexual harassment, and sufficient details known at the time the Notice is issued, such as the identities of the parties involved in the incident, if known, including the complainant; the conduct allegedly constituting covered sexual harassment; and the date and location of the alleged incident, if known.
- A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
- A statement that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney.
- 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 on reaching a determination regarding responsibility, and evidence that both tends to prove or disprove the allegations, whether obtained from a party or other source.
- Any person, (student or employee) who files a knowingly false or malicious report may be subject to disciplinary action.

### **Advisor of Choice and Participation of Advisor of Choice**

Columbia-Greene Community College will provide the parties with equal access to advisors and support persons; any restrictions on advisor participation will be applied equally. Students 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. The College will not intentionally schedule meetings or hearings on dates where the Advisors of Choice for all parties are not available, provided that the Advisors act reasonably in providing available dates and work collegially to find dates and times that meet all



schedules. The College cannot agree to extensive delays solely to accommodate the schedule of an Advisor of Choice. The College will not be obligated to delay a meeting or hearing under this process more than five (5) calendar days due to the unavailability of an Advisor of Choice and may offer the party the opportunity to obtain a different Advisor of Choice or utilize one provided by Columbia-Greene Community College.

Should either the Complainant or Respondent not have an Advisor of Choice, an Advisor will be provided to them by Columbia-Greene Community College.

### **Notice of Meetings and Interviews**

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

### **Delays**

Each party may request a one-time delay in the Grievance Process of up to five (5) calendar days for good cause (granted or denied in the sole judgment of the Title IX Coordinator or designee) provided that the requestor provides reasonable notice, and the delay does not overly inconvenience other parties. For example, a request to take a five day pause made an hour before a hearing for which multiple parties and their advisors have traveled to and prepared for shall generally not be granted, while a request for a five day pause in the middle of investigation interviews to allow a party to obtain certain documentary evidence shall generally be granted.

The Title IX Coordinator or designee or the Interim VP of Students, shall have sole judgment to grant further pauses in the Process.

### **Investigation**

#### **General Rules of Investigations**

Upon acceptance of a signed Title IX complaint as defined in this policy, the Title IX Coordinator will assign a campus Title IX Investigator (s) who is free from bias and conflict of interest. The Title IX Investigator (s) will perform an investigation under a reasonably prompt timeframe of the conduct alleged to constitute covered sexual harassment after the Notice of Allegations is issued.

Columbia-Greene Community College, 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 college and does not indicate responsibility.

Columbia-Greene Community College cannot access, consider, or disclose medical records without a waiver from the party (or parent, if applicable) to whom the records belong or of whom the records include information. The College will provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence, (i.e. evidence that tends to prove and disprove the allegations) as described below.

## **Inspection and Review of Evidence**

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

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

1. Evidence that is relevant, even if that evidence does not end up being relied upon by the institution in making a determination regarding responsibility.
2. Inculpatory or exculpatory evidence that is directly related to the allegations, whether obtained from a party or other source.

The College 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. When the parties involved are students, the student's College email will be the address utilized.

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. Any evidence subject to inspection and review will be available at any hearing, including for the purposes of cross-examination. The parties and their advisors must sign an agreement not to disseminate any of the evidence subject to inspection and review, not to photocopy or otherwise copy the evidence or use such evidence for any purpose unrelated to the Title IX grievance process.

## **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 not be disclosed or may be appropriately redacted before the parties' inspection to avoid disclosure of personally identifiable information of a student. Any evidence obtained in the investigation that is kept from disclosure or appropriately redacted will be documented in a "privilege log" that may be reviewed by the parties and their advisors, if any.

## **Investigative Report**

The Investigator designated by the Title IX Coordinator will create an Investigative Report that fairly summarizes relevant evidence and will provide that Report to the parties at least ten (10) calendar days prior the hearing in an electronic format for each party's review and written response. The Investigative Report is not intended to catalog all evidence obtained by the Investigator, but only to provide a fair summary of that evidence. The Investigator may redact irrelevant information from the Investigative Report when that information is contained in documents or evidence that is/are otherwise relevant.

## **Hearing**

### **General Rules of Hearings**

Columbia-Greene Community College will not issue a disciplinary sanction arising from an allegation of covered sexual harassment without holding a live hearing. The live hearing may be conducted with all parties physically present in the same geographic location, or, at The College's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually through video conferencing accessible to all parties

involved. This technology will enable participants simultaneously to see and hear each other. At its discretion, Columbia-Greene Community College may delay or adjourn a hearing based on technological errors not within a party's control.

All proceedings will be recorded through audio recording. That recording or transcript will be made available to the parties for inspection and review; however review must happen in a designated on-campus location and may not be reproduced or otherwise distributed.

### **Continuances or Granting Extensions**

Columbia-Greene Community College may determine that multiple sessions or a continuance (i.e. a pause on the continuation of the hearing until a later date or time) is needed to complete a hearing. If so, The College will notify all participants and endeavor to accommodate all participants' schedules and complete the hearing as promptly as practicable.

### **Newly Discovered Evidence**

As a general rule, no new evidence or witnesses may be submitted during the live hearing. If a party identifies new evidence or witnesses that were not reasonably available prior to the live hearing and could affect the outcome of the matter, the party may request that such evidence or witnesses be considered at the live hearing.

The Decision-maker who is the Hearing Panel Chair "*the Chair*" will consider this request and make a determination regarding (1) whether such evidence or witness testimony was actually unavailable by reasonable effort prior to the hearing, and (2) whether such evidence or witness testimony could affect the outcome of the matter. The party offering the newly discovered evidence or witness has the burden of establishing these questions by the preponderance of the evidence. If the Chair answers in the affirmative to both questions, then the parties will be granted a reasonable pause in the hearing to review the evidence or prepare for questioning of the witness.

Community Colleges may determine that multiple sessions or a continuance (i.e. a pause on the continuation of the hearing until a later date or time) is needed to complete a hearing. If so, The College will notify all participants and endeavor to accommodate all participants' schedules and complete the hearing as promptly as practicable.

### **Participants in the live hearing**

Live hearings are not public, and the only individuals permitted to participate in the hearing are as follows:

#### ***Complainant and Respondent (The Parties)***

- The parties cannot waive the right to a live hearing.
- The institution may still proceed with the live hearing in the absence of a party and may reach a determination of responsibility in their absence, including through any evidence gathered that does not constitute a "statement" by that party.
  - For example, A verbal or written statement constituting part or all of the sexual harassment itself is not a "prior statement" that must be excluded if the maker of the statement does not submit to cross-examination about that statement. In other words, a prior statement would not include a document, audio recording, audiovisual reading, and digital media, including but not limited to

text messages, emails, and social media postings, that constitute the conduct alleged to have been the act of sexual harassment under the formal complaint. See, OCR Blog (May 22, 2020), available at <https://www2.ed.gov/about/offices/list/ocr/blog/20200522.html>

- The College will not threaten, coerce, intimidate, or discriminate against the party in an attempt to secure the party's participation.
- If a party does not submit to cross-examination, the Hearing Panel cannot rely on any prior statements made by that party in reaching a determination regarding responsibility but may reach a determination regarding responsibility based on evidence that does not constitute a "statement" by that party.
- The 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.
- During the hearing, all parties shall follow the Rules of Decorum as outlined in Appendix B or be subject to removal from the hearing.

#### ***The Decision-Maker "Hearing Panel Chair"***

- The hearing panel will consist of the Hearing Panel Chair and a minimum of two additional panel members (Total of three members).
- 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 will any member of the Hearing Panel serve on the appeals panel 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 a particular case.
- The Hearing Panel will be trained on topics including how to serve impartially, issues of relevance, including how to apply the rape shield protections provided for complainants, and any technology to be used at the hearing. *See Appendix C "Bias/Conflict of Interesting Decision-making Tool"*
- The parties will have an opportunity to raise any objections regarding a Chair's or panel member's actual or perceived conflicts of interest or bias at the commencement of the live hearing.

#### ***Advisor of Choice***

- The parties have the right to select an advisor of their choice, who may be, but does not have to be, an attorney.
- Parties may utilize different advisors for different aspects of the grievance process. For example, a party may have one advisor with them during a hearing and a different advisor during investigatory meetings. No party may have more than one advisor with them at any meeting or hearing related to the Formal Complaint. Unless cross-examining, an advisor may not speak for, or on behalf of, the party.
- 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 institution will select an advisor to serve in this role for the limited purpose of conducting the cross-examination at no fee or charge to the party.
- The advisor is not prohibited from having a conflict of interest or bias in favor of or against complainants or respondents generally, or in favor or against the parties to the particular case.
- The advisor is not prohibited from being a witness in the matter.
- If a party does not attend the live hearing, the party's advisor may appear and conduct cross-examination on their behalf.

- If neither a party nor their advisor appear at the hearing, the College will provide an advisor to appear on behalf of the non-appearing party.

### **Witnesses**

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

### **Hearing Procedures**

For all live hearings conducted under this Title IX Grievance Process, the procedure will be as follows:

- The Hearing Panel Chair will open and establish rules and expectations for the hearing.
- The Parties will each be given the opportunity to provide opening statements.
- The Panel will ask questions of the Parties and Witnesses.
- Parties will be given the opportunity for live cross-examination after the Panel conducts its initial round of questioning; During the Parties' cross-examination, the Panel Chair will have the authority to pause cross-examination at any time for the purposes of asking the Panel's own follow up questions; and any time necessary to enforce the established rules of order.
- Should a Party or the Party's Advisor choose not to cross-examine a Party or Witness, the Party shall affirmatively waive cross-examination through a written or oral statement to the Panel Chair. A Party's waiver of cross-examination does not eliminate the ability of the Panel to use statements made by the Party.

### **Live Cross-Examination Procedure**

Each Party's Advisor will conduct live cross-examination of the other party or parties and witnesses. During this live-cross examination the advisor will ask the other party or parties and witnesses relevant questions and follow-up questions, including those challenging credibility directly, orally, and in real time.

Before any cross-examination question is answered, the Chair 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.

### **Review of Recording**

The recording of the hearing will be available for review by the parties within 5 calendar days unless there are any extenuating circumstances. The recording of the hearing will not be provided to parties or advisors of choice.

## **Determination Regarding Responsibility**

### **Standard of Proof**

Columbia-Greene Community College uses the preponderance of the evidence standard for investigations and determinations regarding responsibility of formal complaints covered under this Policy. This means that the investigation and hearing determine whether it is more likely than not that a violation of the Policy occurred.

### **General Considerations for Evaluating Testimony and Evidence**

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 Panel Chair.

The Hearing Panel shall not draw inferences regarding a party or witness' credibility based on the party or witness' status as a complainant, respondent, or witness, nor shall it base its judgments in stereotypes about how a party or witness would or should act under the circumstances.

Generally, credibility judgments should rest on the demeanor of the party or witness, the plausibility of their testimony, the consistency of their testimony, and its reliability in light of corroborating or conflicting testimony or evidence.

Still, credibility judgments should not rest on whether a party or witness' testimony is non-linear or incomplete, or if the party or witness is displaying stress or anxiety.

Decision makers will afford the highest weight relative to other testimony to first-hand testimony by parties and witnesses regarding their own memory of specific facts that occurred. Both inculpatory and exculpatory evidence will be weighed in equal fashion.

Except where specifically barred by the Title IX Final Rule, a witness' testimony regarding third-party knowledge of the facts at issue will be allowed but will generally be accorded lower weight than testimony regarding direct knowledge of specific facts that occurred.

The Final Rule requires that Columbia-Greene Community College allow parties to call "expert witnesses" for direct and cross examination. While the expert witness will be allowed to testify and be crossed as required by the Final Rule, the Hearing Panel will be instructed to afford lower weight to non-factual testimony of the expert relative to fact witnesses, and any expert testimony that is not directed to the specific facts that occurred in the case will be afforded lower weight relative to fact witnesses, regardless of whether the expert witness testimony is the subject of cross examination and regardless of whether all parties present experts as witnesses.

The Final Rule requires that Columbia-Greene Community College allow parties to call character witnesses to testify. While the character witnesses will be allowed to testify and be crossed as required by the Final Rule, the Hearing Panel will be instructed to afford very low weight to any non-factual character testimony of any witness.

The Final Rule requires that Columbia-Greene Community College admit and allow testimony regarding polygraph tests (“lie detector tests”) and other procedures that are outside of standard use in academic and non-academic conduct processes. While the processes and testimony about them will be allowed to testify and be crossed as required by the Final Rule, the Hearing Panel will be instructed to afford lower weight to such processes relative to the testimony of fact witnesses.

Where a party or witness’ conduct or statements demonstrate that the party or witness is engaging in retaliatory conduct, including but not limited to witness tampering and intimidation, the Chair may draw an adverse inference as to that party or witness’ credibility.

### **Components of the Determination Regarding Responsibility**

The written Determination Regarding Responsibility will be issued simultaneously to all parties through their institution 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, if any, of “Student Code of Conduct and Disciplinary Procedures” the respondent has or has not violated.
5. For each allegation:
  - a. A statement of, and rationale for, a determination regarding responsibility.
  - b. A statement of, and rationale for, any disciplinary sanctions the recipient imposes on the respondent; and
  - c. A statement of, and rationale for, whether remedies designed to restore or preserve equal access to the recipient’s education program or activity will be provided by the recipient to the complainant; and
6. The recipient’s procedures and the permitted reasons for the complainant and respondent to appeal (described below in “Appeal”).

### **Timeline of Determination Regarding Responsibility**

If there are no extenuating circumstances, the determination regarding responsibility will be issued by Columbia-Greene Community College within ten (10) calendar days of the completion of the hearing.

### **Finality**

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

### **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 five (5) 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 Hearing Panel(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.
- Severity of the sanction(s) in light of the offense found responsible for.

The submission of appeal retains any sanctions for the pendency of an appeal. Supportive measures and remote learning opportunities remain available during the pendency of the appeal. If a party appeals, the institution will as soon as practicable notify the other party in writing of the appeal, however the time for appeal shall be offered equitably to all parties and shall not be extended for any party solely because the other party filed an appeal.

Appeals may be no longer than four pages, including attachments. Appeals should be submitted in electronic form using Times New Roman, 12-point font, and double-spaced. Appeals should use footnotes, not endnotes. Appeals that do not meet these standards may be returned to the party for correction, but the time for appeal will not be extended unless there is evidence that technical malfunction caused the appeal document not to meet these standards.

Appeals will be decided by a Hearing Panel who will be free of conflict of interest and bias, and have not served as investigator, Title IX Coordinator, or hearing panel members in the same matter.

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

### **Retaliation**

Columbia-Greene Community College will keep the identity of any individual who has made a report or complaint of sex discrimination confidential, including the identity of any individual who has made a report or filed a Formal Complaint of sexual harassment under this Title IX Grievance Policy, any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, and any witness, except as permitted by the FERPA statute, or as required by law, including the conduct of any investigation, hearing, or judicial proceeding under this Title IX Grievance Policy.

No person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX of the Education Amendments of 1972 or its implementing regulations.

No person may intimidate, threaten, coerce, or discriminate against any individual because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding or hearing under this Title IX Grievance Policy.



Any intimidation, threats, coercion, or discrimination, for the purpose of interfering with any right or privilege secured by Title IX, or its implementing regulations constitutes retaliation. This includes any charges filed against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but that arise from the same facts or circumstances as a report or complaint of sex discrimination or a report or Formal Complaint of sexual harassment.

Columbia-Greene Community College recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that violence, including, but not limited to, domestic violence, dating violence, stalking, or sexual assault occurs, may be hesitant to report such incidents due to fear of potential consequences for their own conduct. The College strongly encourages students to report incidents of domestic violence, dating violence, stalking or sexual assault to college officials. A bystander acting in good faith or a reporting individual acting in good faith who discloses any incident of domestic violence, dating violence, stalking, or sexual assault to college officials or law enforcement will not be subject to the College's Code of Conduct action for violations of alcohol and/or drug use policies occurring at or near the time of the domestic violence, dating violence, stalking, or sexual assault incident. Nothing in this section shall be construed to limit the College's ability to provide amnesty in additional circumstances.

Complaints alleging retaliation may be filed according to: "Complaint Procedure for Review of Allegations of Unlawful Discrimination/Harassment."

#### **VIII. Resources**

**Director of Security – 518.697.6470**

**Title IX Coordinator – 518.697.6337**

**Dean of Student Development – 518.697.6320**

**Counseling/Reach Center – 518.697.6319**

**Columbia County Sherriff – Campus Deputy – 518.697.6475**

**NYS Domestic and Sexual Violence Hotline 1-800-942-6906**

**Confidential Hotline and Support Resources – 800-HARASS-3**

#### **Appendix A: "Guide for Determining Relevance"**

On May 19, 2020, the U.S. Department of Education issued Final Rules governing the Title IX grievance process, effective August 14, 2020. The Final Rule requires that all colleges and universities hold a live hearing before making any determination regarding responsibility for covered reports of Title IX sexual harassment, including sexual violence. This hearing must provide for live cross-examination by the parties' advisors.

Any question posed by the advisors must be evaluated for "relevance" in real time by the hearing officer. 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 Chair must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

### **What is a relevant question?**

The Department of Education encourages institutions to apply the “plain and ordinary meaning” of relevance in their determinations. Basically, a relevant question will ask whether the facts material to the allegations under investigation are more or less likely to be true. *Id.* at 30294. A question not directly related to the allegations will generally be irrelevant. Officials should use common sense in this understanding. Things may be interesting or surprising but not be relevant.

Relevance decisions should be made on a question-by-question basis, looking narrowly at whether the question seeks information that will aid the decision-maker (*at Columbia-Greene Community College this person is known as the Hearing Panel Chair “Chair”*) in making the underlying determination. The relevance decision should not be based on who asked the question, their possible (or clearly stated) motives, who the question is directed to, or the tone or style used to ask about the fact. Relevance decisions should not be based in whole or in part upon the sex or gender of the party for whom it is asked or to whom it is asked, nor based upon their status as complainant or respondent, past status as complainant or respondent, any organizations of which they are a member, or any other protected class covered by federal or state law (e.g. race, sexual orientation, disability).

If a question is relevant but offered in an abusive or argumentative manner, the Chair has the discretion to ask the advisor to rephrase the question in an appropriate manner, consistent with the institution’s decorum policy for hearings. (*See Appendix B: “Rules of Decorum”*)

### **What if the question is “prejudicial” and concerns sensitive or embarrassing issues?**

Much of the content within these hearings may be considered sensitive and/or embarrassing by parties or advisors. However, relevant questions need to be considered *even if* a party or advisor believes the danger of unfair prejudice substantially outweighs their probative value. Only irrelevant questions (detailed below), including about the complainant’s prior sexual history, may be excluded.

### **What is an irrelevant question?**

#### *Question about Complainant’s Prior Sexual Behavior or Sexual Predisposition*

Questions and evidence about the complainant’s sexual predisposition or prior sexual behavior are not relevant, unless:

1. 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
2. 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.

The question is irrelevant because it calls for prior sexual behavior information about the complainant without meeting one of the two exceptions to the rape shield protections defined in 34 C.F.R. § 106.45(b)(6)(i).

#### *Question regarding Privileged Information*

Questions that constitute, or seek disclosure of, information protected under a legally recognized privilege are irrelevant. Depending on the state, individuals with legal privilege may include medical providers (physician, dentist, podiatrist, chiropractor, nurse), psychologists, clergy, rape crisis counselors, and social workers. (For instance, New York’s “laws of privilege” are listed within [CPLR Article 45.](#))

### *Questions about Undisclosed Medical Records*

Questions that call for information about any party's medical, psychological, and similar records are irrelevant unless the party has given voluntary, written consent.

### *Duplicative Questions*

Questions that repeat, in sum or substance, questions already asked by the Hearing Panel prior to cross-examination, or by a party's advisor during cross-examination (and if part of the process, during direct examination), may be ruled duplicative, and therefore irrelevant.

### **How should the decision-maker reach a relevant determination?**

If the decision-maker is a panel, the panel's Chair will make all determinations of relevance.

### **What should the relevance determination consist of?**

The Department of Education explains that the Final Rule "does not require a decision-maker to give a lengthy or complicated explanation" in support of a relevance determination. Rather, "it is sufficient, for example, for a decision-maker to explain that a question is irrelevant because the question calls for prior sexual behavior information without meeting one of the two exceptions, or because the question asks about a detail that is not probative of any material fact concerning the allegations." As such, the decision-maker need only provide a brief explanation of the determination, which will ordinarily consist of one of the following statements depending on the situation.

The relevance determination will be conveyed orally, except as needed to accommodate a disclosed disability of a hearing participant, and all relevance determinations will be preserved in the record of the proceeding.

### **May the parties and/or their advisors ask the decision-maker to reconsider their relevance decision?**

Any party, or their advisor, may request that the Chair reconsider their relevance determination.

The decision-maker may deny or grant the request to reconsider. This determination is final but may be subject to appeal under the Title IX Grievance Process.

## Appendix B: “Rules of Decorum”

### Rules of Decorum

The following Rules of Decorum are to be observed in the hearing and applied equally to all parties (meaning the complainant and respondent) and advisors:

1. Questions must be conveyed in a neutral tone.
2. Parties and advisors will refer to other parties, witnesses, advisors, and institutional staff using the name and gender used by the person and shall not intentionally mis-name or mis-gender that person in communication or questioning.
3. No party may act abusively or disrespectfully during the hearing toward any other party or to witnesses, advisors, or Hearing Panel members.
4. While an advisor may be an attorney, no duty of zealous advocacy should be inferred or enforced within this forum.
5. The advisor may not yell, scream, badger, or physically ‘lean in’ to a party or witness’s personal space. Advisors may not approach the other party or witnesses without obtaining permission from the Hearing Panel Chair.
6. The advisor may not use profanity or make irrelevant *ad hominem* attacks upon a party or witness. Questions are meant to be interrogative statements used to test knowledge or understand a fact; they may not include accusations within the text of the question.
7. The advisor may not ask repetitive questions. This includes questions that have already been asked by the Hearing Panel, the advisor in cross-examination, or the party or advisor in direct testimony. When the Chair determines a question has been “asked and answered” or is otherwise not relevant, the advisor must move on.
8. Parties and advisors may take no action at the hearing that a reasonable person in the shoes of the affected party would see as intended to intimidate that person (whether party, witness, or official) into not participating in the process or meaningfully modifying their participation in the process.

### Warning and Removal Process

The Chair shall have sole discretion to determine if the Rules of Decorum have been violated. The Chair will notify the offending person of any violation of the Rules.

Upon a second or further violation of the Rules, the Chair shall have discretion to remove the offending person or allow them to continue participating in the hearing or other part of the process.

Where the Chair removes a party’s advisor, the party may select a different advisor of their choice, or accept an advisor provided by the institution for the limited purpose of cross-examination at the hearing. Reasonable delays, including the temporary adjournment of the hearing, may be anticipated should an advisor be removed. A party cannot serve as their own advisor in this circumstance.

The Chair shall document any decision to remove an advisor in the written determination regarding responsibility.

For flagrant, multiple, or continual violations of this Rule, in one or more proceedings, advisors may be prohibited from participating in future proceedings at the institution in the advisor role on a temporary or permanent basis. Evidence of violation(s) of this agreement will be gathered by the Title IX Coordinator and/or

the Dean of Student Development or a designee of either and presented the student advisors or employee advisors or their designees. The advisor accused may provide an explanation or alternative evidence in writing for consideration by the student advisors or employee advisors or their designees. Such evidence or explanation is due within fifteen (15) calendar days of receipt of a notice of a charge of re-disclosure or improper access to records. There shall be no right to a live hearing, oral testimony, or cross-examination. The student and employee advisors or their designees shall consider the evidence under a preponderance of the evidence standard and issue a finding in writing and, if the finding is Responsible, shall include a sanction. The finding shall be issued in writing to all Parties and Advisors (if there is a current case pending) within thirty (30) calendar days unless extended for good cause. There is no appeal to this finding. If an Advisor is barred permanently or for a term from serving in the role as Advisor in the future, they may request a review of that bar from the student advisors or the employee advisors or their designees no earlier than three-hundred and sixty-five (365) days after the date of the findings letter.

#### **Relevant Questions Asked in Violation of the Rules of Decorum**

Where an advisor asks a relevant question in a manner that violates the Rules, such as yelling, screaming, badgering, or leaning-in to the witness or party's personal space, the question may not be deemed irrelevant by the decision-maker simply because of the manner it was delivered. Under that circumstance, the decision-maker will notify the advisor of the violation of the Rules, and, if the question is relevant, will allow the question to be re-asked in a respectful, non-abusive manner by the advisor (or a replacement advisor, should the advisor be removed for violation of the Rules).



**Appendix C: Bias/Conflict of Interest Decision-Making Tool**

**Is it Bias/a Conflict of Interest (*per se* and on its own)?**

**Employment Status**

If the Title IX official is an employee of the recipient?	No	Recipients can comply with the final regulation by using the recipient’s own employees.
If the Title IX official is “affiliated” with the recipient?	No	The Department declines to require recipients to use outside, unaffiliated Title IX personnel because the Department does not conclude such prescription is necessary to effectuate the purposes of the final regulations.
If the Title IX official has a supervisory relationship with other Title IX personnel?	No	<p>The Department declines to define certain employment relationships or administrative hierarchy arrangements as a <i>per se</i> prohibited conflicts of interest.</p> <p>The final regulations do not prescribe any particular “chain of reporting” restrictions or declare any such administrative arrangements to be <i>per se</i> conflicts of interest.</p> <p>The Department will hold a recipient accountable for the end result of using Title IX personnel free from conflicts of interest and bias, regardless of the employment or supervisory relationships among various Title IX personnel.</p>

**Professional Experiences or Affiliations**

A history of working in the field of sexual violence, prior work as a victim advocate or work as a defense attorney?	No	The training provided by the regulations is intended to provide Title IX personnel with the tools needed to serve impartially and without bias such that prior professional experience of a person whom a recipient would like to have in a Title IX role need not disqualify the person from obtaining the requisite training to serve impartially in a Title IX role.
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**Other Characteristics**

Student of the recipient?	No	The Department notes that the final regulations do not preclude a recipient from allowing student leaders to serve in Title IX roles as long as the recipient can meet all the requirements
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		and leaves it to the recipient's judgement to decide under what circumstances, if any, a recipient wants to involve students in Title IX roles.
Gender, sexual assault survivor, self-professed feminist, supporting women's or men's rights, having had negative experiences with men or women?	No	The Department cautions recipients not to apply generalizations when evaluating Title IX personnel for bias, warning that this may result in an unreasonable determination.

### Grievance Process Participation

Signing a formal complaint as the Title IX Coordinator?	No	Even when the Title IX Coordinator is also the investigator, the Title IX Coordinator must be trained to serve impartially.
Participating in an emergency removal decision?	No, unless it biases the employee	Title IX personnel trained to make an emergency removal decision or conduct a post-removal challenge proceeding, except if involvement in the emergency removal process results in bias or conflict of interest for or against the complainant or respondent would preclude such personnel from serving in those roles during a grievance process.
Serving as a party advisor?	Exempt from requirement not to have bias	The final regulations impose no prohibition of conflict of interest or bias for such advisors, nor any training requirement for such advisors, in order to leave recipients as much flexibility as possible to comply with the requirement to provide those advisors.
Title IX Coordinator serving as investigator?	No	The final Title IX regulations would not remove the expertise of Title IX Coordinators from the grievance process. Title IX Coordinator can be the investigator but cannot be the decision-maker.
Title IX Coordinator serving as informal resolution facilitator?	No, but not recommended	The final regulations do not require a recipient to provide an informal resolution process and does not preclude the Title IX Coordinator from serving as the person designated by a recipient to facilitate the informal resolution process.
Title IX Coordinator serving as decision-maker?	Yes	Separating the functions of a Title IX Coordinator from those of the decision-maker is no reflection on the ability of the Title IX Coordinator to serve impartially and with expertise. Rather, requiring different individuals to serve in those roles acknowledges that the different phases of a report and formal complaint of sexual harassment serve distinct purposes.
Title IX Coordinator serving as appeal decision-maker?	Yes	The appeal decision-maker cannot be the same person as the decision-maker or as the Title IX Coordinator or investigator in the case. This ensures that the recipient's appeal



		decision-maker reviews the underlying case independently.
Title IX Investigator serving as Title IX Coordinator?	No	No conflict as stated above.
Title IX Investigator serving as decision-maker?	Yes	Separating the roles of investigation from adjudication protects both parties by making a fact-based determination regarding responsibility based on objective evaluation of relevant evidence more likely.*
Title IX Investigator serving as appeal decision-maker?	Yes	*Same rationale
Hearing decision-maker serving as Title IX Coordinator?	Yes	See above
Hearing decision-maker serving as investigator?	Yes	See above
Hearing decision-maker serving as appeal decision-maker?	Yes	The decision-maker reviewing appeals must be a different person than the person who made the initial decision in part because the decision-maker on appeal is asked to review the determination reached by the original decision-maker.

**Grievance Process Outcomes**

The number of outcomes either determining responsibility or non-responsibility?	No	The mere fact that a certain number of outcomes result in determination of responsibility or non-responsibility does not necessarily indicate or imply bias on the part of the Title IX personnel.
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Written: August 31, 2020\_HR/MSF

Updated: May 1, 2023\_HR/MSF