2023-24 Civil Rights: Discrimination, Harassment & Sexual Misconduct Policy

Kenyon College | Policy & Process Training | Process Personnel

Link to Complete Policy

https://www.kenyon.edu/offices-and-services/office-for-civil-rights/discrimination-harassment-and-sexual-misconduct/civil-rights-policy/xi-complaint-resolution/

Terms, Roles, Prohibited Conduct

Terms

- CR/Title IX Coordinator V.
- Investigators XI.G.1.
- Hearing Chair/Panel XI.G.6.
- Adjudicator XI.G.5.
- Appeal Officer XI.I.
- Advisor XI.E.
- Hearing XI.E. & XI.G.6.
- Investigator Decision XI.G.5.
- Supportive Measures X.
- Witness

- Title IX Dismissal XI.G.4.
- Restricted Access X.B.
- Complainant II.
- Respondent II.
- Report II.
- Complaint/Formal Complaint II.
- Prohibited Conduct VII.
- Informal Resolution XI.F.
- Formal Resolution XI.G.
- Remedies XI.A.
- Preponderance of the Evidence II.

Terms: Preponderance of the Evidence

(Section II. Glossary & Definitions)

A preponderance of the evidence means that the information or evidence provided is more likely than not to be true. When evaluating the information and evidence, the decision-maker(s) will first evaluate the quality. The decision-maker(s) will consider all of the information and evidence regardless of its origin. Any information or evidence the decision-maker(s) find to be of high quality should be given more weight than any information or evidence the decision maker(s) find to be of low quality. Quality may or may not be identical with quantity, and sheer quantity alone should not be the basis for a finding of responsibility. The testimony of a single party or witness or a single piece of information or evidence may be sufficient to establish a fact.

Definition continued on next slide

Terms: Preponderance of the Evidence

(Section II. Glossary & Definitions)

Decisions that require the use of an evidentiary standard (determinations of responsibility, process appeals, challenges to Title IX dismissal, and findings of fact) will be made after the decision maker(s) assess the quality of the information or evidence and unanimously determine that the decision is justified. That is, the decision-maker(s) should find that there is sufficient evidence that is relevant, probable, and persuasive to convince them that a particular assertion is more likely than not and that the evidence supporting such an assertion outweighs any evidence to the contrary.

Definition continued <u>from</u> previous slide

Roles

Title IX Formal Resolution

- Civil Rights/Title IX Coordinator
- Investigators
- Witness
- Hearing Chair/Panel
- Advisor (assigned if not chosen)
- Adjudicator = Advisory Role
- Appeal Officer

Non-Title IX Formal Resolution

- Civil Rights & Title IX Coordinator
- Investigators
- Witness
- Advisor (party chooses, not assigned)
- Adjudicator
- Appeal Officer

Roles

Internal Investigators

- Chris Ellsworth
- Jessen Book
- Sarah Murnen
- Tracey Wilson
- Wendy Busenburg
- Yutan Getzler
- Steve Martin
- Erika Farfan
- Caleb Young

External Investigators

- Susan Rodgers, BDB
- Christina Williams, BDB
- Heather Steele, BDB
- Matt Duncan, BMD
- Krista Warren, BMD
- Monica Andress, BMD
- Bryan Meek, BMD
- Kelly Boggs Lape

Roles

Hearing Chair/Panel

- Susan Rodgers, BDB
- Christina Williams,
 BDB
- Heather Steele, BDB
- Matt Duncan, BMD
- Bryan Meek, BMD

Adjudicator

- James Jackson
- Leah Miller
- Sheryl Hemkin
- Jeff Bowman
- Chris Kennerly alternate
- Brian Janssen alternate

<u>Appeal</u>

- Celestino Limas
- Leah Miller alternate
- Sheryl Hemkin alternate
- Jeff Bowman alternate

Restricted Access Consult

- Robin Hart Ruthenbeck
- Todd Burson
- Tom Hawks alternate
- Chris Kennerly alternate
- Brian Janssen alternate

Prohibited Conduct

Sexual Harassment Title IX

(Section VII.C.)

Sexual Harassment - Title IX Jurisdiction Determination (Section VII.C.) - ALL Must be Met

- The conduct must have occurred against a person in the United States.
- The conduct must have occurred within the College's education program or activity:
 - (a) in a location, event, or circumstances over which the College exercised substantial control over both the respondent and the context in which the sexual harassment occurs or
 - (b) in relation to a building owned or controlled by a student organization that is officially recognized by the College.
- The complainant must be participating in or attempting to participate in the education program
 or activity of the College at the time the formal complaint is filed.

Initial determination by the Title IX Coordinator. Investigators provide analysis as part of Investigative Report and then Title IX Coordinator makes final Title IX Dismissal.

Prohibited Conduct - Sexual Harassment - Title IX

Conduct on the basis of sex that satisfies one or more of the following:

- Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to a program or activity; or
- Quid Pro Quo An <u>employee</u> of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct; or

- Sexual Assault as defined in NIBRS*
 - Sexual Intercouse
 - Intentional Touching (fondling)
 - Sexual Intercourse with a relative
 - Statutory Rape
 - Dating Violence
 - Domestic Violence
 - Stalking

^{*}National Incident-Based Reporting System

Prohibited Conduct (Section VII.)

Prohibited Conduct Non-Title IX

- Sexual Assault Non-TIX
- Dating Violence Non-TIX
- Domestic Violence Non-TIX
- Stalking Non-TIX
- Sexual Harassment Non-TIX

- Threats Toward an Intimate Partner
- Sexual Exploitation
- Retaliation
- Discrimination on the Basis of a Protected
 Characteristic
- Harassment on the Basis of a Protected
 Characteristic

College Imposed Restricted Access & Administrative Leave (X.B. Supportive Measures)

Students

The Civil Rights & Title IX Coordinator conducts an individualized safety and risk analysis to determine whether there exists an immediate threat to physical health or safety of any student or other individual arising from the allegations of Prohibited Conduct. If so, the Civil Rights & Title IX Coordinator may, in consultation with the appropriate College personnel, impose Restricted Access on student respondents. The Civil Rights & Title IX Coordinator will notify both parties in writing of the resulting restrictions and any changes to such restrictions. All respondents are able to challenge Restricted Access.

Employees

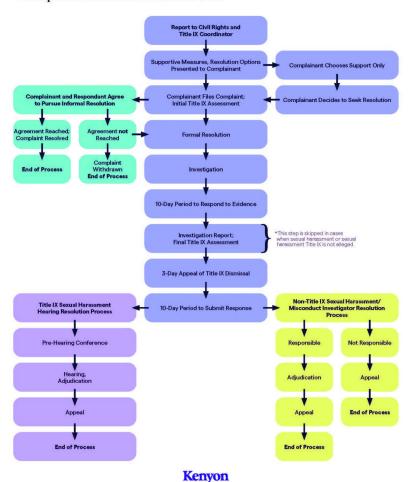
The Civil Rights & Title IX Coordinator, in conjunction with other appropriate College personnel, may impose administrative leave on employee respondents if the facts and circumstances surrounding the reported conduct support such leave. Administrative leave is a separate process from Restricted Access and is not disciplinary in nature. Employees placed on administrative leave will receive written notice of the conditions of that leave, but will not be able to challenge the administrative leave.

Break for Questions

Investigation & Resolution Options

Decision Tree

Civil Rights: Harassment, Discrimination and Sexual Misconduct Complaint Resolution Decision Tree





Investigator Role (Section XI.G.1.) - Interviews

"The Civil Rights & Title IX Coordinator will designate two investigators to conduct an adequate, reliable and impartial investigation, one of which will typically be a College employee. The College may engage an external investigator as one or both of the two assigned investigators. In complex situations, the Civil Rights & Title IX Coordinator may engage additional trained investigators to assist in gathering the information that will be considered by the primary investigators... The interviews will be recorded by the investigators."

Internal Investigator = Responsible for capturing the recording via Zoom. The recording in the property of the College.

Investigator Role (Section XI.G.1.) - Interviews

"The parties will have an equal opportunity to present witnesses, including expert witnesses, and to submit evidence. The investigators will also gather any available physical evidence, including documents, communications between the parties, and other electronic records as appropriate and available. The parties may submit questions to be asked of parties and witnesses. Investigators will review submitted questions and, in their discretion, may choose which questions are necessary and appropriate to the investigation and conduct any follow-up, as they deem relevant."

Investigator Role - Review of Evidence (Section XI.G.2.)

"The evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint will be made available to the parties and their advisors, including the evidence upon which the College may not rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence. The parties will have 10 calendar days to review the evidence. The parties will be offered the opportunity to review the evidence and provide a written response that will be submitted to the investigators for the completion of the Investigation Report."

Investigator Role - Investigation Report (Section XI.G.3.)

- Overview of the complaint made and summary of the investigative methodology
- Summary of relevant information gathered, including:
 - timeline of incident being investigated;
 - complainant's account of events;
 - respondent's account of events;
 - witness accounts;
 - evidence gathered;

- Areas of agreement;
- Areas of disagreement;
- Assessment of whether or not the complaint meets one or more of the required elements of the definition of sexual harassment under Title IX, including rationale; and
- Appendix containing <u>all</u> of the collected evidence.

Investigator Role - Investigation Report (Section XI.G.3.)

"In cases where Sexual Harassment is being alleged, the investigators will consider whether the conduct alleged in the formal complaint and the Notice of Investigation would constitute "Sexual Harassment - Title IX,". The investigators will consider the evidence gathered from the complainant during the investigation, and make a recommendation to the Civil Rights & Title IX Coordinator regarding the appropriate resolution process. The Civil Rights & Title IX Coordinator will review the recommendation of the investigators and make the final determination as to whether the conduct alleged, if demonstrated by a preponderance of the evidence, would constitute "Sexual Harassment – Title IX." This determination is made only considering the information provided by the complainant, regardless of other evidence available in the case."

FINAL Title IX Assessment & Appeal

"Parties have 3 business days after receipt of the investigative report to submit in writing an appeal of a determination regarding whether the conduct constitutes "Sexual Harassment - Title IX." The appeal will be considered by an appropriately trained staff member designated by the Title IX Coordinator."

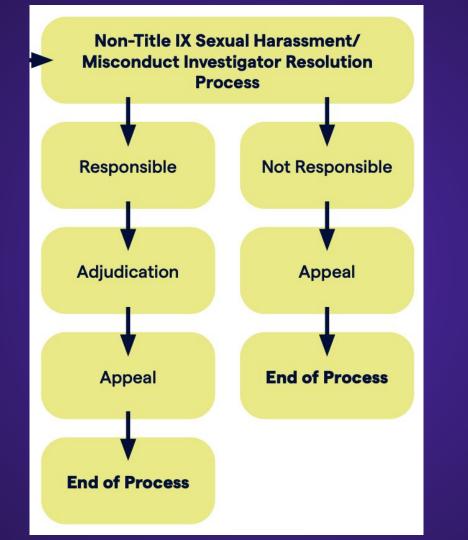
"The appeal decision will be communicated in writing to the parties, their advisors, and the Title IX Coordinator. The decision will also indicate the path for complaint resolution: Hearing Resolution or Investigator Resolution."

Break for Questions

Investigator Resolution - Non-Title IX (Section XI.G.5.)

Determination

"The investigators will make a determination, by a preponderance of the evidence, whether there is sufficient information to support a finding of responsibility. The investigators' finding, and the rationale for the finding, will be included in the final investigative report that will be shared with the parties by the Title IX Coordinator."



Investigator Resolution - Non-Title IX (Section XI.G.5.)

Determination: Evaluating Evidence

"The investigators should first evaluate the quality of the evidence. The investigators should consider all of the evidence regardless of who provided it. Any evidence the investigators find to be of high quality should be given more weight than any evidence the investigators find to be of low quality. Quality may, or may not be identical with quantity, and sheer quantity alone should not be the basis for a finding of responsibility. The testimony of a single party or witness may be sufficient to establish a fact."

Investigator Resolution - Non-Title IX (Section XI.G.5.)

Determination: Credibility Analysis

"The investigators will evaluate all admissible, relevant evidence for weight or credibility. Credibility is not based solely on observing demeanor, but also considers detail, interest or bias, corroboration where it would reasonably be expected to exist, the circumstances of the disclosure, and the nature of the relationship."

"The degree to which any inaccuracy, inconsistency, or implausibility in a narrative provided by a party or witness should affect a determination regarding responsibility is a matter to be decided by the investigators, after having the opportunity to ask questions of parties and witnesses, and to observe how parties and witnesses answer the questions posed by the other party. Corroborating evidence is not required."

Investigator Resolution: Adjudication (Section XI.G.5.)

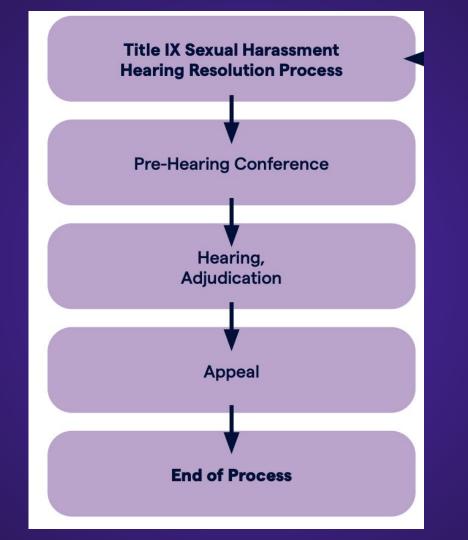
- 1. For reports against students or student groups, the Adjudicator is typically the Senior Director of Campus Life.
- 2. For reports against staff, the Adjudicator is typically the Director of Human Resources or, if the Director of Human Resources is unable to serve, the Senior Director of Campus Life.
- 3. For reports against faculty, the Adjudicator is typically the Provost or, if the Provost is unable to serve, the Director of Human Resources.

Investigator Resolution: Adjudication (Section XI.G.5. & XI.H.)

Factors Considered in Sanctioning

- (1) the respondent's prior conduct history;
- (2) how the College has sanctioned similar incidents in the past;
- (3) the nature and violence of the conduct at issue;
- (4) the impact of the conduct on the complainant;
- (5) the impact of the conduct on the community, its members, or its property;
- (6) whether the respondent has accepted responsibility for their actions;
- (7) whether any part of the conduct involved the violation of a no contact order;
- (8) any other mitigating or aggravating circumstances, including the College's values.

Hearing Resolution - Title IX



A Hearing Resolution will be used to resolve cases that include charges of Sexual Harassment - Title IX.

"A Hearing Resolution includes a pre-hearing conference, a live hearing, decisions about responsibility and sanctioning by the Hearing Chair or Panel, and an optional appeal process.

Hearing Chair/Panel

Typically one person serves as the Hearing Chair. This person facilitates the hearing, determines the order and flow of the hearing, makes decisions regarding relevance prior to a question being answered, makes the finding, and instances where the respondent is determined responsible, assigns the sanction/s.

Pre Hearing Conference

- Each party will have their own pre-hearing conference.
- The Title IX Coordinator, the Hearing Chair, and the advisor must be in attendance.
- The advisors must share with the Hearing Chair their list of witnesses to appear at the hearing
- The Hearing Chair may, at their discretion, add names of other witnesses contained in the report for the purpose of appearing at the hearing and submitting to cross examination.

Live Hearing

The Hearing Chair will provide an introduction detailing the purpose of the hearing, have those present identify themselves and their role, remind all parties of the expectation to be candid and honest in their response, and provide a brief overview of the procedure and the anticipated order of the hearing.

Cross-Examination

The advisors will be responsible for orally asking relevant questions, including those questions which challenge credibility, to the other party or parties and any witnesses directly, in real-time and in a manner that, in the Hearing Chair's sole discretion, is not inappropriate, harassing, intimidating, irrelevant, or redundant.

Relevance

Relevant questions are those tending to prove or disprove a fact at issue.

Before a complainant, respondent, or witness answers a question by an advisor, the Hearing Chair will first determine whether the question is relevant and briefly explain any decision to exclude a question as not relevant, or request rephrasing of the question. The Hearing Chair is not required to give a lengthy or complicated explanation of a relevancy determination during the hearing. The Hearing Chair may later send to the parties any revisions to the explanation of relevance that was provided during the hearing.

Decision, Finding, Sanction

Decisions regarding responsibility will be made by the Hearing Chair/Panel and communicated to the parties and their advisors in writing within 15 business days from the conclusion of the live hearing. The Hearing Chair/Panel will also determine the sanctions. In determining the sanctions, the Hearing Chair/Panel will consult with the appropriate College staff member.

Written Decision Letter

- Identification of the allegations potentially constituting policy violations
- 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
- Summary of statements made at the hearing

- Findings of fact supporting the determination
- Conclusions regarding the application of the Policy to the facts
- Statement and rationale as to the finding for each allegation, including a determination regarding responsibility
- Disciplinary sanctions imposed on the respondent
- Whether additional remedies will be provided to the complainant
- Opportunity for appeal

Appeal Process: Hearing & Investigator Resolution (Section XI.I.)

In a request for an appeal, the burden of proof lies with the party requesting the appeal.

Grounds for Appeal:

- Procedural irregularity that affected the outcome of the matter;
- 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 Civil Rights & Title IX Coordinator, investigator(s), or Hearing Chair/Panel 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
- The decision of the investigators under Section XI.G.5, the Hearing Chair/Panel under Section XI.G.6, or the adjudicator under Section XI.G.5. was clearly erroneous based on the evidential record

Information & Resources

- Kenyon's Policy and Flow Chart can be found at this web address:
 https://www.kenyon.edu/offices-and-services/office-for-civil-rights/discrimination-harassment-a
 nd-sexual-misconduct/civil-rights-policy/
- US Dept of Education Office for Civil Rights Blog: https://www2.ed.gov/about/offices/list/ocr/blog/index.html
- Bricker Graydon's Resource Center DCL's, Regulations, Clery Statutes, etc. https://www.bricker.com/resource-center/title-ix

Information & Resources

• Samantha Hughes:

- Stephens Hall, 21
- o Office Phone: 740-427-5820
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Kevin Peterson:

- Stephens Hall, 24
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- o Cell Phone: 740-485-2042



Questions? Comments?