

This page intentionally left blank

Regional Resources.....	11.....
National Resources.....	11.....
Emergency Removal.....	11.....
Administrative Leave.....	12.....
Resolution Process.....	12.....
Filing a Formal Complaint.....	12.....
Multi-Party or Multi-Allegation Situations.....	12.....
Determining Jurisdiction and Mandatory Title IX Dismissal.....	13.....
Discretionary Title IX Dismissal of Complaint.....	13.....
Notice of Dismissal.....	13.....
Withdrawal or Resignation While Charges are Pending.....	14.....
Notice of Allegations.....	14.....
Advisors.....	15.....
Alternative Resolution.....	15.....
Role of the Alternative Resolution Facilitator.....	Error! Bookmark not defined.
Confidentiality.....	16.....
Alternative Resolution Options.....	16.....
Administrative Resolution.....	16.....
Facilitated Resolution.....	16.....
Formal Resolution Process.....	17.....
Notice of Meetings and Interviews.....	17.....
Request for Delay.....	17.....
Investigation.....	17.....
General Rules of Investigations.....	17.....
Ongoing Notice.....	18.....
Review of Evidence.....	18.....
Investigative Report.....	19.....
Hearing.....	19.....
General Rules of Hearings.....	19.....
Continuances or Granting Extensions.....	19.....

Hearing Procedures.....	21.....
Questioning Procedure.....	21.....
Hearing Recording & Transcript.....	22.....
Determination Regarding Responsibility.....	22.....
Standard of Proof.....	22.....
Considerations for Evaluating Testimony and Evidence.....	22.....
Written Determination Regarding Responsibility.....	23.....
Timeline of Determination Regarding Responsibility.....	24.....
Sanctions.....	24.....
Appeals.....	24.....
Retaliation.....	25.....
Appendix I: Rules of Decorum for Resolution Process Hearings.....	28.....
Acknowledgement.....	31.....

This page intentionally left blank

Introduction

Title IX

Title IX of the Educational Amendments of 1972 prohibits any person in the United States from being discriminated against on the basis of sex in seeking access to any educational program or activity receiving federal financial assistance. The U.S. Department of Education, which enforces Title IX, has long defined the meaning of Title IX's prohibition on sex discrimination broadly to include various forms of sexual harassment and sexual violence that interfere with a student's ability to equally access educational programs and opportunities.

U.S. Department of Education Final Rule under Title IX

On May 19, 2020, the U.S. Department of Education issued a Final Rule under Title IX of the Education Amendments of 1972 that:

- ” Defines the meaning of “sexual harassment” (including forms of ~~base~~ violence)
- ” Addresses how an institution must respond to reports of misconduct falling within that definition of sexual harassment, and
- ” Mandates a grievance process that an 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.

See, 85 Fed. Reg. 30026 (May 19, 2020). The full text of the Final Rule and its extensive Preamble are available here: <http://bit.ly/TitleIXReg>

Haverford

- c. Sexual exploitation, defined as occurring when a person abuses or exploits another person's sexuality for the purpose of sexual gratification, financial gain, personal benefit or advantage, or any other non-legitimate purpose without that person's consent. The act or acts of sexual exploitation are prohibited even though the behavior does not constitute one of the other sexual misconduct offenses

Examples of sexual exploitation include:

- o observing another individual's nudity or sexual activity or allowing another to observe consensual sexual activity in a place where that person would have a reasonable expectation of privacy, without that person's consent
- o recording, and/or distributing (including streaming) of images, photography, video, or audio recording of sexual activity or nudity, or distribution of such without that person's consent;
- o prostituting another individual;
- o exposing one's genitals in non-consensual circumstances;
- o knowingly exposing another individual to a sexually transmitted disease or virus without that individual's knowledge; and
- o inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity.

General Rules of Application

The above referenced acts are considered sexual discrimination. Title IX of the Educational Amendments of 1972, 20 U.S.C. §§1681-1688 ("Title IX"), prohibits discrimination on the basis of sex in Education Programs and Activities operated by recipients of federal financial assistance, including Haverford College. This Policy is Intended to meet the College's Title IX obligation (

Effective Date
This Sexual Misconduct Policy is

Complainant

A Complainant is any individual who has reported being or is alleged to be the victim of conduct that could constitute Sexual Misconduct as defined under this Policy.

Confidential Resource

A Confidential Resource is a College employee who is not required to report notice of sexual harassment to the Title IX Coordinator. 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

- x Consent is not effective if it results from the use or threat of physical force, intimidation, or coercion, or any other factor that would eliminate an individual's ability to exercise their own free will to choose whether or not to have sexual contact.
- x An individual who is physically incapacitated from alcohol or other drug consumption (voluntarily or involuntarily) or is asleep, unconscious, unaware, or otherwise physically helpless is considered unable to give consent.
- x In the Commonwealth of Pennsylvania, the age of majority is 18. Under state law, consent cannot be given by minors under the age of 13 and can only be given by a minor under the age of 16, if the other party is less than four (4) years older than the minor.

Education Program or Activity includes:

- x Any Haverford College on-campus premises
- x Any off-campus premises over which the College has substantial control over the Respondent and the context in which the Sexual Misconduct occurred. This includes § 14.1 (ty)-0.2 (he) 4T1 (-2

The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act (FERPA), as outlined in the [HaverCollegeFERPA](#) policy. Employee privacy will be protected in accordance with [HaverCollege Employee Handbook](#).

Resolution Process

The Resolution Process is a formal resolution process to address reported conduct that may be a

Depending on the level of information available about the incident or the individuals involved, the

Regional Resources

x

Administrative Leave

The College retains the authority to place a non-student employee Respondent on administrative leave during the pendency of the Resolution Process consistent with [Haverford College Employee Handbooks](#). An employee will not be placed on administrative leave unless and until a Formal Complaint of Sexual Misconduct has been filed with the College.

Resolution Process

Filing a Formal Complaint

The timeframe for the College's Resolution Process begins with the filing of a Formal Complaint. The Resolution Process will be concluded within a reasonably prompt manner, and in ordinary cases no longer than ninety (90) business days after the filing of the Formal Complaint. The phrase "business days" shall refer to those days ordinarily recognized by the College's administrative calendar as workdays. 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. Parties submit a written request for an extension to the Title IX Coordinator.

To file a Formal Complaint, a Complainant must provide the Title IX Coordinator a written, signed complaint describing the facts alleged. If a Complainant does not wish to make a Formal Complaint in connection with a report of Sexual Misconduct, the Title IX Coordinator may, in their discretion, determine a Formal Complaint is necessary and sign the Formal Complaint. When the Title IX Coordinator signs a Formal Complaint, the Title IX Coordinator is not the Complainant or otherwise a Party. The Title IX Coordinator will inform the Complainant of this decision in writing, and the Complainant need not participate in the process further. The Complainant will still have the right to file a Formal Complaint with the Title IX Coordinator.

Respondents, and all involved Witnesses. The decision to consolidate Formal Complaints is not subject to appeal.

Determining Jurisdiction and Mandatory Title IX Dismissal

The Resolution Process will apply to a Formal Complaint, in the reasonable determination of the Title IX Coordinator, the

Withdrawal or Resignation While Charges are Pending

Should a student withdraw from the College or refuse to participate in the Resolution Process, the College reserves the right to continue with the Formal Complaint in the student's absence. A determination of responsibility that results in a student's suspension or expulsion will be on that student's official transcript.

Should an employee resign with unresolved allegations pending, Human Resources records will reflect that status, and the College reserves the right to continue with a Formal Complaint in the employee's absence.

Notice of Allegations

The Title IX Coordinator will draft and provide the Notice of Allegations to any Party in the allegations of Sexual Misconduct. Such notice will occur as soon as practicable after the College receives a Formal Complaint of the allegations if there are no extenuating circumstances.

The Parties will be notified simultaneously by their College email accounts if they are a student or employee, and by other reasonable means if they are neither. The College

Advisors

Parties participating in the Formal Resolution Process as a Complainant or Respondent may be accompanied by an Advisor to any meeting or hearing to which they are required or are eligible to attend. The Advisor is not an advocate. Except where explicitly stated in this Policy, as consistent with the Department of Education's Final Rule, Advisors shall not participate directly in the process.

The College will reasonably attempt to accommodate meetings and hearings on dates when Advisors are available, provided that an Advisor acts reasonably in providing available dates and works collegially to find dates and times that meet all schedules. While the College will copy a Party's Advisor on communications, Parties are required to communicate with the Title IX Coordinator, Investigator, and

request for Facilitated Resolution and may

occurred or may decide not to participate in an investigation or hearing. This does not shift the burden of proof away from the College and does not indicate responsibility.

The 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/or exculpatory evidence (i.e., evidence that tends to prove or disprove the allegations respectively), as described below.

Ongoing Notice

If, in the course of an investigation, the College decides to investigate allegations about the Complainant or Respondent that are not included in the original

The Parties and their Advisors must sign an agreement not to disseminate the evidence subject to inspection and review or use such evidence for any purpose unrelated to the Resolution Process

Evidence obtained in the investigation that is determined in the reasoned judgment of the investigator not to be directly related to the allegations in the Formal Complaint will be included in the appendices to the Investigative Report and may be appropriately redacted before the inspection to avoid disclosure of personally identifiable information of a student.

Investigative Report

The Investigator will create an Investigative Report that accurately summarizes relevant evidence. The Investigative Report is not intended to catalog all evidence obtained by the investigator but only to provide an accurate summary of the relevant evidence.

Only relevant evidence (including both inculpatory and exculpatory) will be referenced in the Investigative Report.

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

The College will not issue a disciplinary sanction arising from an allegation of Sexual Misconduct without holding a Hearing and permitting appeal unless otherwise resolved through an Alternative Resolution Process

The Hearing may be conducted with all Parties present in the same physical location, or, at the College's discretion, any or all Parties, Witnesses, and other participants may appear at the hearing virtually through video conference. This technology will enable parties simultaneously to see and hear each other. At its discretion, the College may delay or adjourn a hearing based on technological errors not within a Party's control.

Continuances or Granting Extensions

The College may d(e)6 (ma (i)-2 (1a2 (ge)4 (m)-2 (g2 -0.004 Tc 9 -1.3 0 Td ()6 (ma)(r)3 (or))-2 (l) 5.61

- x For example, an oral or written statement constituting part or all of the Sexual Misconduct itself is not a “prior statement” that must be excluded if the maker of the statement does not submit to questioning 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 Complaint.
- x The decisionmaker cannot draw an inference about the Determination Regarding Responsibility based solely on a Party's absence from the hearing or refusal to answer questions.
- x Advisors shall be subject to this Policy [Rules of Decorum](#) and may be removed in the discretion of the Hearing Panel upon violation of those Rules.

The Hearing Panel

- x The Hearing Panel will consist of three (3) trained decisionmakers: a Panel Chair and two Panel members. The Panel Chair may be a College administrator or an outside consultant contracted by the College. Panel members will be appointed administrators or faculty members.
- x No member of the Hearing Panel will also have served as the Title IX Coordinator, Title IX Investigator, Advisor or Witness for any Party in the case.
- x No member of the Hearing Panel may serve on the Appeals body in the case.
- x No member of the

Witnesses

- x Witnesses cannot be compelled to participate in the Hearing and have the right not to participate in the Hearing free from retaliation.
- x If a Witness does not submit to questioning, as described, 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 or Party.

questioning at the hearing. The Hearing Panel will not draw an inference about the determination regarding responsibility based solely on a party or witness's absence from the hearing or to answer questions.

Procedure #2

For all other Hearings Parties, and not their Advisors, must conduct any questioning of witnesses. With respect to questioning of the other party, the Panel will conduct the questioning based upon written questions e

Decisionmakers will afford the highest weight relative to other testimony to ~~first~~ testimony by Parties

Timeline of Determination Regarding Responsibility

If there are no extenuating circumstances, the Determination Regarding Responsibility will be issued by the College within ten (10) business days of the completion of the Hearing

The Determination becomes final either on the date that the College notifies the Parties with the result of any Appeal if such 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 file an Appeal expires.

Sanctions

When a Respondent accepts or is found responsible for violating Sexual Misconduct Policy

The grounds for Appeal are limited to

- x Procedural irregularity that affected the outcome of the matter (i.e. a failure to follow the College's own procedures)
- x New evidence that was not reasonably available at the time

charges filed against an individual for code of conduct violations that do not involve Sexual Misconduct under this Policy, but that arise from the same facts or circumstances as a report or complaint of Sexual Misconduct under this Policy.

Record Retention

The College shall retain for a period of seven years after the date of closure: the official file relating to a formal resolution, including any investigation, hearing, Determination Regarding Responsibility, sanctioning, and/or Appeal processes involving allegations of Sexual Misconduct in which a Respondent was found to have violated the Policy and was separated from the College, the College may retain such official case files indefinitely.

This page intentionally left blank

Appendix I: Rules of Decorum for Resolution Process Hearings

Purpose of the Rules of Decorum

Title IX Hearings are not civil or criminal proceedings and are not designed to mimic formal trial proceedings. They are primarily educational in nature, and the U.S. Department of Education (“the Department”) writing about Title IX in the Final Rule purposefully designed these final regulations to allow recipients to retain flexibility to adopt rules of decorum that prohibit any party advisor or Hearing Panel Chair from questioning witnesses in an abusive, intimidating, or disrespectful manner.” 85 Fed. Reg. 30026, 30319 (May 19, 2020). The Department has noted that institutions “are in a better position than the Department to craft rules of decorum best suited to their educational environment” and build a hearing process that will reassure the Parties that the institution “is not throwing a party to the proverbial wolves.” Id

To achieve this purpose, colleges may provide for reasonable rules of order and decorum, which may be enforced through the removal of an Advisor who refuses to comply with the rules at 30320. As the Department explains, the removal process “incentivizes a party to work with an advisor of choice in a manner that complies with a recipient’s rules that govern the conduct of a hearing, and incentivizes colleges and universities to appoint advisors who also will comply with such rules so that hearings are conducted with respect for all participants.”

At base, these Rules of Decorum require that all Parties, Advisors, and College s /TT2 thaq 0 Tw 22.2.2016 that shall not use the name and gender used by the person and shall not use the name and gender of the person in communication or questioning.

3. No Party may act abusively or disrespectfully during the hearing. This includes Advisors, Witnesses, or Hearing Panel members.
4. The Advisor may not yell, scream, badger, or physically threaten any Party. Advisors may not approach the other Parties within the hearing space. Advisors may not approach the other Parties from the Hearing Panel Chair.

Relevant Questions Asked in Violation of the Rules of Decorum

Should an Advisor ask a relevant question in a manner that violates the Rules, such as yelling, screaming, badgering, or leaning into the Witness or Party's personal space, the question will not be deemed irrelevant by the Hearing Panel Chair simply because of the manner in which it was delivered. Under that circumstance, the Hearing Panel Chair will notify the Advisor of the violation of the Rules, and, if the question is relevant, will allow the question to be asked in a respectful, non-abusive manner by the Advisor (or a replacement Advisor, should the Advisor be removed for violation of the Rules).

Acknowledgement

Policy adapted from the Model Grievance Policy for Addressing Formal Complaints of Sexual Harassment Under the Title IX Regulations provided by:

SUNY Student Conduct Institute
The State University of New York
State University Plaza
Albany, NY 12246

Created: August 14, 2020

Revised: August 25, 2020; March 2023