

# **DISCRIMINATION, HARASSMENT, SEXUAL MISCONDUCT RESOLUTION PROCEDURES**

The University of South Carolina Upstate is committed to providing a prompt, fair, impartial, and equitable response to complaints of discrimination, harassment, sexual misconduct, and related retaliation all of which are prohibited by the university’s Policy Against Discrimination, Harassment & Sexual Misconduct. The university’s procedures for responding to prohibited conduct are grounded in fairness and support for all parties, include procedural protections that ensure notice, equitable opportunities to participate, and a neutral and impartial investigation, resolution, and appeal. These procedures establish the required practice for responding to a complaint through either an informal or investigative resolution and are meant to be read in conjunction with the university’s Policy Against Discrimination, Harassment & Sexual Misconduct. All individuals that conduct resolutions must comply with these procedures.

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## **I. Purpose**

- A.** The Resolution Procedures are the procedures to be used in responding to complaints against students, faculty, staff, student organizations, and other persons participating or attempting to participate in an educational program or activity: (e.g. third-parties such as volunteers, visitors, vendors, contractors, consultants, guests, alumni, applicants for admission or employment, or other individuals) pursuant to the university's Policy Against Discrimination, Harassment & Sexual Misconduct.

## **II. Scope and Jurisdiction**

- A.** These Resolution Procedures pertain to complaints falling under the scope and jurisdiction of the university's Policy Against Discrimination, Harassment & Sexual Misconduct, see this policy for more guidance related to scope and jurisdiction.

## **III. Applicability and Modifications**

- A.** These Resolution Procedures apply to complaints filed after the effective date of these procedures.
- B.** The definitions of prohibited conduct to be used in responding to a complaint, are the definitions outlined in the applicable policy in effect at the time the reported conduct occurred.
- C.** The university will give parties notice of the procedures and policy to be used in responding to a complaint.
- D.** The university reserves the right to modify the Resolution Procedures at any time. Modifications of the Resolution Procedures are effective upon approval of the Civil Rights & Title IX Coordinator or designee.

## **IV. Preliminary Inquiry**

- A.** Upon receipt of a report of prohibited conduct, the Civil Rights & Title IX Coordinator will engage in a preliminary inquiry to: assess and understand the nature of the report; provide outreach to Complainant; offer supportive measures as outlined in the university's Policy Against Discrimination, Harassment & Sexual Misconduct; determine what university policy, if any, applies to the report; determine whether the parties are within the jurisdiction of the university; determine whether the report implicates a safety threat; and determine what resolution may be reasonably available and appropriate.
- A.** Making a report is different from filing a complaint. When the Civil Rights & Title IX Coordinator receives a report of prohibited conduct, the Civil Rights & Title IX Coordinator will offer supportive measures to a Complainant, inform the Complainant of the availability of supportive measures with or

without the filing of a complaint, and explain the process for filing a complaint.

- B.** At the conclusion of a preliminary inquiry the following resolutions options may be available:
  - i. No further action
    - 1. No complaint filed and no supportive measures received.
    - 2. May involve a referral to another university policy.
  - ii. Supportive measures only
    - 1. Complainant receives supportive measures only and elects to not file complaint.
  - iii. Investigative resolution
    - 1. Investigation requested in complaint filed by Complainant or Civil Rights & Title IX Coordinator.
  - iv. Informal Resolution
    - 1. Informal Resolution requested in complaint filed by Complainant.
  - v. Other Resolution
    - 1. Educational Conversations or coaching which are considered non-disciplinary actions.

## **V. Complaint**

- A.** If a Complainant wishes to initiate an investigative or informal resolution, the Complainant must submit a complaint.
  - i. The university will defer to a Complainant's request to not file a complaint, unless the Civil Rights & Title IX Coordinator determines a complaint should be filed in the absence of a complaint by a Complainant. See the university's Policy Against Discrimination, Harassment & Sexual Misconduct for the factors used in deciding if the Civil Rights & Title IX Coordinator should file a complaint.
  - ii. The university will not compel a Complainant to participate, nor retaliate against a Complainant for non-participation, in an investigation.
- B.** Upon receipt of a complaint, the Civil Rights & Title IX Coordinator will assess if the complaint meets the procedural requirements of 34 C.F.R. § 106.45 to determine if the complaint will be categorized as a Title IX complaint or a Civil Rights complaint:

- i. Title IX complaint: A Title IX complaint is a complaint of sexual misconduct that:
  - 1. Takes place in the context of an education program or activity of the university; and
  - 2. Occurs against a person in the United States; and
  - 3. Where the Complainant is participating in or attempting to participate in the education program or activity of the university; and
  - 4. Meets the regulatory definition of sexual harassment in 34 C.F.R. §106.30; and
  - 5. Where the Respondent is an individual the university has authority to discipline.
- ii. Civil Rights complaint: a harassment complaint; a discrimination complaint; or a sexual misconduct complaint, which does not fall under the definition of Title IX Sexual Harassment as outlined in the university's Policy Against Discrimination, Harassment & Sexual Misconduct.
- iii. Hearings are available for complaints of sexual misconduct, as defined by the university's Policy Against Discrimination, Harassment, & Sexual Misconduct. All other complaints will be resolved through an investigative report drafted by the Investigator and a Resolution Officer.

C. Dismissal of a Title IX complaint or Civil Rights complaint:

- i. Dismissal of a Title IX complaint:
  - 1. If the reported conduct in a complaint does not meet the basis of a Title IX complaint as outlined in section V.B.i.1-5 above, the university will dismiss the complaint as a Title IX complaint. The university will send written notice and reason(s) for the dismissal simultaneously to the parties.
    - a. If the reported conduct in the complaint, if true, would still be a violation of the university's Policy Against Discrimination, Harassment & Sexual Misconduct, the complaint may proceed as Civil Rights complaint.
- ii. Dismissal of a Civil Rights complaint:
  - 1. If the reported conduct in a Civil Rights complaint, even if true, would not be a violation of the university's Policy Against Discrimination, Harassment & Sexual Misconduct, the complaint

may be dismissed. The university will send written notice and reason(s) for the dismissal simultaneously to the parties.

iii. Additional basis for dismissals:

1. The Civil Rights & Title IX Coordinator may dismiss a Title IX complaint or a Civil Rights complaint at any stage in the resolution process in any of the following three circumstances:
  - a. The Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the complaint or any allegations therein;
    - i. Although a Complainant may withdraw a complaint at any time, the university may be compelled to continue an investigation or disciplinary process.
  - b. The Respondent is no longer enrolled or employed by the university;
  - c. Specific circumstances, including a Complainant's decision not to respond to outreach by the Civil Rights & Title IX Coordinator, prevent the university from gathering evidence sufficient to reach a determination as to the complaint or allegations therein.
- iv. If a complaint is dismissed, any investigative or informal resolution will cease, but the matter may be referred to other resolution processes or appropriate follow up such as an educational conversation or informal coaching.

**D. Appeals of a dismissal of a Title IX complaint or Civil Rights complaint:**

- i. Parties may appeal the dismissal of a complaint by notifying the Civil Rights & Title IX Coordinator in writing of their appeal within five (5) business days of the dismissal of the complaint. The other party will be notified of the appeal of the dismissal decision. Appeals of a dismissal decision will be reviewed by an appeals officer or designee. Parties will be notified of the outcome of the appeal in writing within five (5) business days of filing the dismissal decision appeal. The outcome of a dismissal decision appeal can either uphold or reverse the dismissal decision. If the appeal upholds the dismissal, the basis of the dismissal decision will be implemented. If the dismissal decision is reversed, either an investigative or informal resolution process will resume. Any dismissal decision appeal outcome is final.

**E. Consolidation of complaints:**

- i. The university may consolidate formal complaints 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 prohibited conduct arise out of the same facts or circumstances.
- ii. If any part of a complaint includes allegations that would constitute sexual misconduct, then the complaint will be resolved through a hearing.

## **VI. Timeframe for Resolutions**

**A.** The Civil Rights & Title IX Coordinator is committed to providing a reasonably prompt, fair, impartial, and equitable resolution of all matters referred for resolution. All timeframes are approximate, and the university may extend any timeframe for good cause with written notice to the parties. An extension may be required for good cause to ensure the integrity and thoroughness of the investigation; to comply with a request by law enforcement; in response to the unavailability of the parties or witnesses; based on the need for language assistance or accommodation of disabilities; or for other legitimate reasons, such as intervening breaks in the academic calendar, finals periods, the complexity of the investigation, the volume of information or length of the written record, and/or other considerations that impact the timing of the investigation, hearing or appeal.

- i. Timeframes. A typical investigation will vary depending on factors such as the complexity of the investigation and the severity and extent of the alleged discrimination, harassment, and sexual misconduct. Parties will be updated on the status of the investigation. Major steps of the process and approximate timeframes for completion include:
  1. For investigative resolutions:
    - a. Conducting the investigation, which includes interviewing parties and witnesses and reviewing documentation (90 business days). This period includes but is not limited to:
      - i. Providing parties an equal opportunity to inspect and review any evidence, as outlined in these procedures (10 business days);
      - ii. Providing parties the opportunity to submit a written response to the investigative report (10 business days)
    - b. Scheduling and conducting hearing (if applicable) and written determination issuance or preparation and finalization of investigative report (45 business days).
    - c. Appeals (30 business days)

2. For informal resolutions:
  - a. Any Informal Resolution Agreement should be signed by parties within ninety (90) business days of receipt of request for an informal resolution.
  - ii. The timeframes listed above are an approximation; the investigative resolution process and informal resolution process could be longer or shorter. Other factors may affect one or more parts of the timeframe, including and not limited to, the complexity, severity, and extent of the alleged sexual misconduct, discrimination, or harassment. The process may be extended as appropriate or if necessary for reasons such as illness, holidays, unavailability of parties or witnesses, complexity of the case, concurrent law enforcement activity, or the need for language assistance or accommodation of disabilities.
  - iii. Extension requests. A written extension request for any part of any resolutions process will be reviewed for reasonableness, which may include the timing and rationale for the request, to determine whether the request will be granted.

## **VII. Overview of Informal Resolution Process**

- A. The informal resolution process is designed for parties who would prefer to resolve complaints outside of the investigative resolution process.
  - i. Informal resolution is available only once a complaint has been filed, prior to a determination of responsibility, and if the Complainant and Respondent both voluntarily consent to the informal resolution process in writing.
  - ii. Informal resolution is not available in cases in which an employee (faculty or staff) is alleged to have sexually harassed a student.
  - iii. If a Complainant wishes to initiate an informal resolution, the Complainant must submit a complaint requesting an informal resolution.
    1. If a Complainant or Respondent requests informal resolution during the course of an investigative resolution process, the other party will be contacted regarding the request, and the written notice process outlined in section VII. B will ensue.
- B. Written Notice:
  - i. Upon receipt of a complaint requesting an informal resolution, or a request from a party during the course of an investigative resolution, the Civil Rights & Title IX Coordinator will provide written notice of a request for informal resolution to the Respondent or Complainant. The written notice

will include:

1. The allegations;
  2. The requirements of the informal resolution process;
  3. The circumstances under which the parties are precluded from resuming a complaint arising from the same allegations;
  4. The right to end the informal resolution process at any time prior to resolution and resume an investigative resolution process with respect to the complaint;
  5. The consequences resulting from participating in the informal resolution process, including that the records and communications created or maintained as part of the informal resolution process may be viewed by parties, or later used and/or considered in a later investigative resolution process, if relevant.
  6. An attached Informal Resolution Acknowledgement form.
- ii. Upon receipt of written notice of complaint requesting informal resolution or a request for informal resolution during the course of an investigative resolution, the parties will need to sign and return an Informal Resolution Acknowledgement form within five (5) business days of receiving the written notice or request to initiate an informal resolution.
- C.** A trained Resolution Officer or designee facilitates the informal resolution process.
- D.** A Resolution Officer or designee will schedule a preliminary meeting with each party, separately, to discuss the informal resolution process generally, to determine goals and set expectations, and answer any questions.
- E.** Parties may be accompanied by an advisor at any meetings related to an Informal Resolution.
- F.** Prior to reaching an Informal Resolution Agreement, any party can withdraw from the process and an investigative process could resume, if initiated prior, or an investigative resolution could begin upon receipt of a new complaint requesting an investigation.
- G.** Informal Resolution Agreement:
- i. Any Informal Resolution Agreement reached will be documented by the Resolution Officer or designee. Both parties must agree to and sign the Agreement.
  - ii. A Resolution Officer or designee may determine specific terms are needed in the Agreement to meet certain legal requirements or address safety



concerns and reserve the right to require such terms in order for an Agreement to be approved.

1. Should a party not agree to any term required by the university, the informal resolution process will terminate, and an investigative resolution could either resume or be initiated.
- iii. The Agreement needs to be reviewed and approved by the Civil Rights & Title IX Coordinator or designee. Once the Agreement is approved, the parties will be notified, and then bound by its terms.
- iv. Informal Resolution Agreements will outline the consequences of a party failing to comply with the agreement.

**H.** The Civil Rights & Title IX Coordinator will maintain records of the written notice as outlined in section VII. B, the Informal Resolution Acknowledgement form signed by both parties, the Informal Resolution Agreement form signed by parties, and documentation of any completed outcomes.

## **VIII. Overview of Investigative Resolution Process**

**A.** If a Complainant wishes to initiate an investigative resolution, the Complainant must submit a complaint requesting an investigative resolution.

**B.** Written Notice:

- i. The Civil Rights & Title IX Coordinator will provide written notice of a complaint requesting an investigative resolution to the Respondent(s). The written notice will include:
  1. A copy of these procedures and the applicable university policy;
  2. Details regarding the identities of the parties, if known, and the date, time and location, and nature of the reported conduct;
  3. The potential policy violation(s);
  4. The name of the Investigator(s) conducting the investigative resolution;
    - a. Parties should promptly notify the Civil Rights & Title IX Coordinator about any potential conflicts of interest with the assigned Investigator. If a conflict is identified, a new Investigator will be assigned.
  5. The name of the Civil Rights & Title IX Coordinator or designee who can assist with supportive measures for either party;
  6. 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 investigative resolution process;

7. Information about the parties' rights to be accompanied by an advisor of their choice throughout the process, information about the importance of preserving any potentially relevant evidence, and general information about the parties' rights and responsibilities;
  8. Prohibition against making false statements during the process.
- ii. If the Civil Rights & Title IX Coordinator, upon receipt of a complaint, does not have adequate information to meet the requirements of providing written notice as outlined in section VIII.B.i.1-5 above, additional inquiry may occur prior to sending written notice of a complaint.
  - iii. Complainant(s) will be notified when written notice of a complaint is sent to the Respondent(s).
  - iv. If, during the course of an investigation, the Investigator decides to investigate additional allegations of potential policy violations, not previously included in the written notice of a complaint, the Investigator must send notice of the additional allegations to the parties.
    1. Notice of additional allegations must be provided to parties in advance to any interview or meeting with the Investigator to allow the parties sufficient time to prepare a response.

#### C. Fact Gathering:

- i. The university, not the parties, is responsible for gathering relevant evidence to the extent reasonable possible.
  1. The parties are encouraged to provide all relevant information as promptly as possible to facilitate a prompt resolution.
  2. In the event that a party declines to voluntarily provide material information, the university's ability to conduct a prompt, thorough, and equitable investigation may be impacted.
- ii. The university will not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.
- iii. During an investigation, both parties will have the opportunity to: meet separately with the investigator, submit written statements, identify fact and expert witnesses, and provide relevant inculpatory and exculpatory information or evidence, including documents, photographs, communications between the parties, and medical records (subject to the consent of the applicable person), and other electronic records as appropriate.

iv. Evidentiary considerations:

1. A Complainant's prior sexual history is generally not relevant, although evidence may be admitted if determined relevant in two circumstances:
    - a. Where the Respondent alleges the sexual contact was consensual, as evidence of the manner and nature of how the parties communicated consent in the past may be relevant in assessing whether consent in the current allegation, recognizing however, that the mere fact of a current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent; and;
    - b. To show that someone other than the Respondent committed the conduct.
    - c. Any party seeking to introduce information about prior sexual history should bring this information to the attention of the Investigator at the earliest opportunity. Where a sufficient informational foundation exists, the Investigator will assess the relevance, form, and reliability of the information and determine if it is appropriate for inclusion in the investigative report.
  2. Exculpatory evidence may include evidence that a party acted in self-defense. Self-defense is when a person who is not the primary aggressor in an encounter uses the minimum force required to remove their own self or another from an immediate risk of harm. Actions that escalate or continue the encounter will not be considered self-defense.
- v. The Investigator will send written notice of any interview date, time, and location, name of participant(s) and the purpose of the interview to the parties and witnesses, in sufficient time for the party to prepare and participate.
  - vi. The Investigator will obtain a party's voluntary, written consent in order to access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, in the investigative resolution process.

**D. Evidence Review:**

- i. Following the fact gathering portion of the investigation, the Investigator

will provide parties with an opportunity to inspect and review any evidence obtained as part of the investigation, that is directly related to the allegations in the complaint, including evidence the university does not intend to rely on in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.

- ii. The Investigator will send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy.
- iii. The parties will have ten (10) business days to submit a written response, which the Investigator will consider prior to completion of the investigative report.
  1. In the written response to the Evidence Review, the parties may offer additional comments or feedback on the evidence as gathered, clarify information previously shared, suggest additional witnesses, or identify any other relevant information or evidence to assure the thoroughness, sufficiency, and reliability of the investigation.
  2. The Investigator may take additional investigative steps based upon the written response of the parties prior to completion of the investigative report.
  3. If the matter does not require a hearing for resolution, (e.g. non-sexual misconduct cases), and there is new evidence material to the investigation, the parties will have five (5) business days to review the new evidence and submit an additional written response prior to completion of the investigative report.

**E. Acceptance of Responsibility:**

- i. At any point during the investigation, the Respondent may elect to accept responsibility for some or all of the potential policy violations. Where there is an acceptance of responsibility of some but not all of the potential policy violations, the investigation will continue to conclusion. Where there is an acceptance of responsibility of all of the potential policy violations, the Investigator will complete an investigation report of all information gathered to date and refer the matter to the Resolution Officer for sanctioning as described below in section X.
- ii. The parties may also agree to stop the investigative resolution process and engage in an informal resolution of the complaint at any time before a determination of responsibility, provided that the Complainant and Respondent give voluntary, written consent and the university deems it

appropriate to stop the investigation. Through informal resolution, the parties may agree on a proposed sanction.

**F. Investigative Report:**

- i. The Investigator will prepare a written investigative report that fairly summarizes the relevant information and facts gathered during the investigation. The Investigator will submit the investigative report to Civil Rights & Title IX Coordinator, who will assign a Resolution Officer or designee.
  1. If the matter does not require a hearing, (e.g. non-sexual misconduct cases), the assigned Resolution Officer or designee will determine whether there is sufficient evidence, by a preponderance of the evidence, to support a finding of responsibility as to each element of each potential policy violation at issue and include this analysis in a final investigative report.
    - a. The final investigative report will be shared with the appropriate university officials for sanctioning, if applicable. A Resolution Officer, or designee, will deliver the investigative report, including any sanctions, simultaneously to parties.
  2. If the matter does require a hearing, (e.g. sexual misconduct cases), the Investigator will submit the investigative report to the Civil Rights & Title IX Coordinator who will assign a Resolution Officer to facilitate a hearing.
    - a. Following the submission of written responses, if not waived, by both parties, the Civil Rights & Title IX Coordinator or designee, will provide an investigative report that fairly summarizes relevant evidence, in an electronic format at least ten (10) business days prior to a hearing to each party and each party's advisor, if any, for their review and written response.
    - b. After the delivery of the investigative report, the matter will proceed to hearing, where applicable, unless both parties voluntarily agree to informal resolution in lieu of a hearing, pursuant to the requirements listed in section VII.

**IX. Hearing Procedures**

- A. Hearings are available for complaints of sexual misconduct, as defined by the university's Policy Against Discrimination, Harassment, & Sexual Misconduct. Parties will receive a copy of more detailed hearing procedures at the time a Notice of Hearing letter is sent.

**B. Notice of Hearing:**

- i. If a hearing is to be held, a Notice of Hearing letter will be sent to the parties. The notice will be given to the parties no fewer than ten (10) business days prior to the hearing. Unless already provided to the parties, the notification will include the applicable policy, these resolution standards, and the date, time, and location of the hearing, and the designated resolutions officer conducting the hearing.

**C. Postponement of Hearing:**

- i. The Respondent and Complainant may request a postponement for reasonable cause to the Civil Rights & Title IX Coordinator or the Hearing Coordinator. A request for a postponement for reasonable cause must be made in writing, include supporting rationale, and be received within (3) business days of receiving a Notice of Hearing letter, absent extraordinary circumstances. The university reserves the right to reschedule the hearing for the first available date.
- ii. While the university recognizes that the parties and their advisors have professional and personal obligations outside of this process, postponements are not automatic and will generally be of limited duration. The university encourages parties to consider their advisor's availability for a hearing and other stages of the process when choosing an advisor.

**D. Resolution Officer:**

- i. A Resolution Officer is also referred to as a Decision-Maker.
- ii. The Resolution Officer may be a university administrator or an external adjudicator.
- iii. The Resolution Officer will review the investigative report and any written statements provided by the parties in response to the investigative report, all evidence gathered during the investigation, and any additional relevant evidence introduced at the hearing. The Resolution Officer will determine whether there is sufficient evidence, by a preponderance of the evidence, to support a finding of responsibility as to each element of each potential policy violation at issue.
- iv. Any person serving as a Resolution Officer must be impartial and free from actual bias or conflict of interest for or against either party or bias for or against complainants and respondents, generally.
- v. The parties may identify any potential conflicts of interest with the Resolution Officer prior to the hearing and present them, in writing, to the Civil Rights & Title IX Coordinator or the Hearing Coordinator for review within three (3) university business days of receiving the Notice of

Hearing letter. Notice of potential conflicts should be raised as soon as the party becomes aware. If a conflict of interest is identified by the Civil Rights & Title IX Coordinator or the Hearing Coordinator, a new Resolution Officer will be assigned.

- vi. Any person serving as a Resolution Officer must be adequately trained to resolve cases of alleged sexual misconduct in accordance with applicable policies and procedures.
- vii. Any person serving as a Resolution Officer, or involved in a hearing procedure, must be adequately trained regarding all applicable hearing procedures and any technology used.

**E. Hearing Format:**

- i. The hearing is an opportunity for the parties to address the Resolution Officer. The parties may address any information in the investigative report and written statements submitted in response to the investigative report. The university will make all evidence directly related to the allegations, as shared in the evidence review, available to the parties at the hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.
- ii. The Complainant and Respondent will have the opportunity to provide an opening and closing statement to the Resolution Officer and answer questions from the Resolution Officer and the other party's advisor. Relevant witnesses will be invited to testify at the hearing, including the Investigator. Each party will have the opportunity to question the other party, witnesses, and the Investigator, through their advisor.
  - 1. If a party does not have an advisor present at the hearing, the university will provide, without fee or charge to that party, an advisor, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party.
- iii. Advisors may only ask relevant questions of any party or witnesses. Before any party or witness responds to a question, the Resolution Officer will first determine whether the question is relevant and briefly explain any decision to exclude a question as not relevant as defined above.
  - 1. Direct questioning of a party by their own advisor is not permitted. A party may never conduct questioning of the other party themselves.
  - 2. A party's advisor must adhere to the requirements and expectations outlined in the Role of the Advisor Acknowledgment form.

iv. Attendance:

1. Because the most accurate and fair review of the facts can best be accomplished when all parties are present, all parties and witnesses are strongly encouraged to attend and participate. If an individual chooses not to attend a hearing, the hearing will proceed as scheduled and a determination of the complaint will be made based on the relevant and admissible evidence presented at the hearing.
  2. The Resolution Officer cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions
  3. Live hearings be conducted with all parties physically present in the same geographic location or, at the university's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.
    - a. When applicable, and at the request of either party, the university will provide for the hearing to occur with the parties located in separate rooms with technology enabling the Resolution Officer and parties to simultaneously see and hear the party or the witness answering questions.
- v. Hearings will be audio recorded. Parties may request the audio recording for inspection and review.

**F. Standard of Evidence:**

- i. A Respondent will only be found in violation if a preponderance of evidence supports the Respondent engaged in conduct that violated university policy.
- ii. A finding of responsibility by a preponderance of the evidence, means it is more likely than not, based on all the evidence and reasonable inferences from the evidence, that the Respondent violated the policy.
- iii. If the evidence weighs so evenly that the Resolution Officer is unable to say there is a preponderance of evidence on either side, the Resolution Officer must determine there is insufficient evidence to conclude a violation of the policy occurred.
- iv. A Respondent is presumed to be not responsible for the alleged conduct unless and until a determination regarding responsibility is made at the conclusion of the resolution process.



**G. Other Evidentiary Considerations:**

- i. A Complainant's prior sexual history is generally not relevant, although evidence may be admitted if determined relevant in two circumstances:
  1. Where the Respondent alleges the sexual contact was consensual, as evidence of the manner and nature of how the parties communicated consent in the past may be relevant in assessing whether consent in the current allegation, recognizing however, that the mere fact of a current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent; and;
  2. To show that someone other than the Respondent committed the conduct.
- ii. Exculpatory evidence may include evidence that a party acted in self-defense. Self-defense is when a person who is not the primary aggressor in an encounter uses the minimum force required to remove their own self or another from an immediate risk of harm. Actions that escalate or continue the encounter will not be considered self-defense.

**H. Written Determinations:**

- i. Following the conclusion of the hearing, the Resolution Officer will prepare a written determination, including the finding of responsibility or non-responsibility, and rationale. The written determination will include:
  1. Identification of the allegations potentially constituting prohibited conduct;
  2. A description of the procedural steps taken from the receipt of the 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 the application of the applicable policy to the facts;
  5. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the university imposes on the Respondent, and whether remedies designed to restore or preserve equal access to the university education program or activity will be provided by the university to the Complainant
  6. The university's procedures and basis to appeal a written determination.

- ii. The Resolution Officer will submit the written determination, including any applicable sanctions, to the Civil Rights & Title IX Coordinator within five (5) days following the conclusion of the hearing.

## **X. Sanctions**

- A.** In all sexual misconduct cases, the Resolution Officer or designee will prepare a written determination on the potential policy violation(s), which will outline the sanction and the rationale for the sanction and submit it to the Civil Rights & Title IX Coordinator within ten (10) business days following the conclusion of the hearing. In all other cases, the Resolution Officer or designee will prepare a final investigative report and submit it to the Civil Rights & Title IX Coordinator or designee, who will consult with the proper university officials on sanctions as outlined below.
- B. Sanctioning for Students**
- i. If a student Respondent is found responsible for one or more violations of the applicable university policy, the Civil Rights & Title IX Coordinator or designee will consult with the Dean of Students or designee on the appropriate sanction consistent with the university's Student Code of Conduct.
- C. Sanctioning for Employees**
- i. If an employee Respondent is found responsible for one or more violations of the applicable university policy, the Civil Rights & Title IX Coordinator or designee will consult with Human Resources and/or Employee Relations on the appropriate sanction consistent with the university's Disciplinary Action and Termination for Cause Policy (HR 1.39).
  - ii. Any sanctions or corrective action will be implemented in collaboration with the Respondent's supervisor and any other appropriate Human Resource professional as appropriate.
- D. Sanctioning for Faculty**
- i. If a Faculty Respondent is found responsible for one or more violations of the applicable university policy, the Civil Rights & Title IX Coordinator or designee will consult with the applicable Dean and/or Provost or designee on the appropriate sanction consistent with any applicable policy and procedures.
  - ii. Any sanctions or corrective action will be implemented in collaboration with the Respondent's supervisor and the Office of the Provost.
- E.** Sanctions should be commensurate with the determined violation(s). When deciding the sanction(s), the Resolution Officer and Civil Rights & Title IX Coordinator or designee, in consultation with proper university officials, should account for any mitigating and/or aggravating factors including,

but not limited to:

- i. The facts and circumstances of the underlying conduct,
- ii. Past misconduct by the Respondent,
- iii. Failure of the Respondent to comply fully with previous sanctions,
- iv. Whether the Respondent has accepted responsibility for the conduct,
- v. Actual and potential harm caused by the violation,
- vi. Degree of intent and motivation of the Respondent in committing the policy violation,
- vii. Impairment resulting from voluntary use of alcohol or drugs (i.e. other than medically necessary) will also be considered an aggravating, and not a mitigating, factor.
- viii. The severity and pervasiveness of the conduct that constituted the violation,
- ix. the impact or implications of the conduct on the community or the University.

**F.** Regardless of whether a Respondent is found not responsible or responsible for violating the policy, a referral to other investigative units and/or additional resolution processes may be appropriate if the alleged conduct may violate another university policy or constitute inappropriate or unprofessional conduct. Other options, including supportive measures, remain available to both the Complainant and the Respondent.

- i. Regardless of a finding of responsibility, the Investigator or Resolution Officer may make recommendations to the Civil Rights & Title IX Coordinator for additional remedies for the Complainant to address the effects of the conduct on the Complainant, to restore or preserve the Complainant's access to the University of South Carolina Upstate educational programs and activities, and restore to the Complainant, to the extent possible, benefits and opportunities lost as a result of the alleged prohibited conduct. The investigator may also identify remedies to address the effects of the prohibited conduct on the university community.
- ii. The Civil Rights & Title IX Coordinator will review the remedies recommended by the Investigator or the Resolution Officer and consider the appropriateness of continuing supportive measures on an ongoing basis. The Civil Rights & Title IX Coordinator is responsible for the effective implementation of any remedies.

## **XI. Notice of Determination**

- A.** The Resolution Officer will provide a Notice of Determination, including the written determination resulting from a hearing, or a written determination resulting from a final investigative report, including the sanctions, to the parties simultaneously.
- B.** Any sanctions will be imposed immediately, pending any appeal.

## **XII. Appeals**

- A.** Both parties may appeal a determination regarding responsibility and a dismissal of a complaint or any allegations therein, on the following bases:
  - i. Procedural irregularity that affected the outcome of the matter;
  - ii. 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;
  - iii. The Investigator(s), or Resolution Officer or designee(s) had a conflict of interest or bias for or against Complainants or Respondents generally, or the individual Complainant or Respondent specifically, that affected the outcome of the matter.
- B.** The party requesting the appeal must clearly articulate that their request falls within one of the bases for appeal. The Civil Rights & Title IX Coordinator or designee, so long as that person is not involved in the case as the assigned Investigator or Resolution Officer, will perform an initial review of the appeal.
- C.** Where the Civil Rights & Title IX Coordinator or designee finds that at least one of the bases for appeal is clearly articulated, the appeal will proceed through the appeals process, which includes:
  - i. Assigning an appeals officer who is adequately trained to review appeals in cases of alleged discrimination, harassment, or sexual misconduct, is familiar with applicable policies and procedures, and who does not have a conflict of interest or bias for or against either party or bias for or against Complainants and Respondents generally;
  - ii. Notifying the other party in writing when an appeal is filed and implementing appeal procedures equally for both parties;
  - iii. Giving both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
  - iv. Issuing a written decision describing the result of the appeal and the rationale for the result; and
  - v. Providing the written decision simultaneously to both parties.

**D.** Where the Civil Rights & Title IX Coordinator or designee does not find that one of the bases is clearly articulated, they will deny the appeal and not assign the appeal to an appeals officer. In such instances, the findings will stand, and the appeal will be retained in the investigation file. A party must provide specific information to articulate that one or more of the grounds of appeal could be met. Vague or blanket assertions or assertions unsupported by specific facts or information will be denied.

**E.** Appeal Procedures

- i. The appeal is not intended to re-hear or re-argue the same case and is limited to the specific grounds outlined in the appeal procedures above. The appeal must state the specific grounds for the appeal and should include all supporting documentation.
- ii. Appeals must be submitted in writing to the Civil Rights & Title IX Coordinator within five (5) business days after the Notice of Outcome is issued.
  1. Any extensions to the appeal date may be made at the discretion of the Civil Rights & Title IX Coordinator or designee.
  2. Whenever an appeal is submitted, the other party will have the opportunity to respond, and their response will be due five (5) business days after notification is received.
  3. The appeal officer will decide the appeal based upon a review of the record and supporting documents (e.g. prior disciplinary history).
  4. All appeals are documentary reviews, no interviews or meetings are conducted.
- iii. Possible outcomes from the appeal officer. The appeal officer may after reviewing the case:
  1. Uphold the original decision and/or sanction(s) or corrective action;
  2. Dismiss the case or individual finding against the Respondent and vacate any portion or all of the sanction(s)/corrective action;
  3. Remand the case for investigation;
  4. Remand the case to the original Resolution Officer or refer the case to a new Resolution Officer to be reheard. Cases may be remanded for the purpose of considering a specific issue(s) or for a new hearing. If a case is reheard by a Resolution Officer and the Respondent is found in violation, the sanction/corrective action

imposed can be greater or lesser than that imposed at the original hearing.

- a. The appeal procedures above will also apply to the outcome of a remanded investigation and/or hearing.
- iv. Each party shall be limited to one appeal of a decision of a Resolution Officer and/or a dismissal of a complaint or any allegations therein.
- v. Neither party is required to respond to an appeal. Not responding to an appeal does not imply agreement with the appeal.
- vi. A complaint that is resolved by informal resolution is not subject to appeal unless the right of appeal is included as a specific part of the informal resolution.
- vii. A Respondent, through an informal resolution, who has accepted responsibility for violating the university's Policy Against Discrimination, Harassment & Sexual Misconduct waives the right to appeal.
- viii. The decision of the appeal officer is final. Additional procedures may apply for matters involving a faculty member Respondents in accordance with the university's Faculty Manual. Additional procedures may apply for matters involving employees covered by the State Employees Grievance and Procedures Act in accordance with the university's Grievance Policy (HR 1.42)
- ix. The determination regarding responsibility becomes final either on the date that the university provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

### **XIII. Additional Information**

- A. Designees for Investigative Resolution Process: The Civil Rights & Title IX Coordinator or designee may designate, at its discretion, internal or external designees to perform any of the aforementioned functions outlined in this process including, but not limited to, investigations, adjudications, informal resolutions, and appeals. The designee must adhere to the requirements of applicable university policy and these procedures.
  - i. The Civil Rights & Title IX Coordinator or designee retains the discretion to determine whether the use of an internal or external designees to conduct investigations, adjudications, or any other provision of the university' Policy Against Discrimination, Harassment & Sexual Misconduct is appropriate. The Civil Rights & Title IX Coordinator or designee may consult with other appropriate university offices to determine whether use of an internal or external designee is warranted

as well as the appropriate manner in which to engage such designee.

- ii. Any internal or external designees shall have adequate training and qualifications, as determined by the university, to conduct a prompt, fair, impartial, and equitable investigation, adjudication, or any other provision of the university's Policy Against Discrimination, Harassment & Sexual Misconduct
  - iii. Any internal or external designee(s) that is designated to address an allegation, must adhere to the requirements of applicable university policy, these procedures, and applicable law.
- B.** The university's overarching goal is that all complaints be resolved in a prompt, fair, and impartial manner. Although cooperation with law enforcement may require the university to temporarily suspend the fact-gathering portion of an investigation temporarily, the university will promptly resume its investigation. The university will not, however, wait for the conclusion of a criminal proceeding and as needed, will take immediate steps to provide appropriate supportive measures and conduct resolutions.

**The Discrimination, Harassment, Sexual Misconduct Resolution Procedures have been adapted from the USC Columbia campus - Discrimination, Harassment, Sexual Misconduct Resolution Procedures to suit the USC Upstate campus.**