

Policy 6.4 Procedures for Employees
Draft for Stakeholder Review
3.21.19

Procedures for Resolution of Reports Against Employees Under Cornell University Policy 6.4 for the Following Acts of Prohibited Conduct:

- Aiding Prohibited Conduct;
- Attempting to Commit Prohibited Conduct;
- Dating and Domestic Violence;
- Protected-Status Harassment, including Sexual Harassment
- Retaliation;
- Sexual Assault;
- Sexual Exploitation;
- Stalking;
- Violating an Interim Measure.

These procedures apply to all units of the University except for Weill Cornell Medicine, which will administer Policy 6.4 under Weill Cornell Medicine procedures.

These procedures supersede other university policies and procedures. Employees who violate Policy 6.4 may face disciplinary action up to and including the termination of employment.

Policy 6.4 is administered jointly by the Title IX Coordinator, the Department of Inclusion and Workforce Diversity (“DIWD”) and Workforce Policy and Labor Relations (“WPLR”). For ease of reading, these entities are referred to collectively as “~~Title IX~~ Title IX” may consult with other appropriate University officials and administrators, including the office of the University Counsel.

Commented [A1]: Note for Final Draft: the reference to the Title IX office is a placeholder for the new name of the office that will be responsible for these procedures.

These procedures afford comprehensive and final determinations regarding allegations of misconduct under Policy 6.4. Matters resolved under these procedures are not subject to review or further appeal or grievance under any other university policies or procedures, including Trustee, college and Academic Freedom and Professional Standing of the Faculty (“AFPS”) committee grievance processes, with the exception of employees whose employment is subject to a collective bargaining agreement.

Commented [A2]: Note for Final Draft: Specific references to these grievance procedures were added.

Policy 6.4 Procedures for Employees
Draft for Stakeholder Review
3.21.19

Additional Protections and Remedies

In addition to the procedures available under University Policy 6.4, students and employees may also choose to pursue legal remedies under the state and federal laws listed below:

- New York Human Rights Law

A complaint can be filed with the State Division of Human Rights, <https://dhr.ny.gov/contact-us>, within one (1) year of the alleged discrimination.

A complaint may also be filed in New York Supreme Court within three (3) years of the alleged discrimination.

- Title VII of the Civil Rights Act of 1964

The Equal Employment Opportunity Commission (“EEOC”) is responsible for enforcement of the federal law prohibiting employment discrimination, Title VII. An individual can file with the EEOC anytime within 300 days from the alleged discrimination.

For more information, visit: www.eeoc.gov.

- Title IX

The Office of Civil Rights, the United States Department of Education is responsible for enforcement of Title IX. For more information: OCR@ed.gov or (800) 421-3481.



TABLE OF CONTENTS

1	EmployeeS Under These Procedures	6
2	Definition of Formal Complaint and Report	6
3	University Right to Act	6
4	DESIGNATION AS COMPLAINANT AND RESPONDENT	7
5	Academic Freedom and Freedom of Speech and Expression	7
6	DEFINITIONS OF PROHIBITED CONDUCT	8
6.1	Aiding Prohibited Conduct	8
6.2	Attempting to Commit Prohibited Conduct	8
6.3	Dating and Domestic Violence.....	8
6.4	Protected-Status Harassment (see also Sexual and Gender-Based Harassment)	8
6.5	Retaliation	9
6.6	Sexual Assault	9
6.7	Sexual Exploitation	11
6.8	Sexual and Gender-Based Harassment	11
6.9	Stalking	12
6.10	Violating an Interim Measure.....	13
7	EFFECTIVE DATE OF THESE PROCEDURES.....	13
8	Application of University Policies and Procedures	13
9	JURISDICTION.....	14
10	TIME LIMIT TO FILE FORMAL COMPLAINTS.....	14
11	COMPUTATION OF DEADLINES.....	15
12	THE UNIVERSITY’S RESPONSE TO A REPORT OF PROHIBITED CONDUCT.....	15
12.1	Initial Assessment	15
12.1.1	Where the Complainant’s Identity Is Known	15
12.1.2	Where the Complainant’s Identity Is Unknown.....	15
12.2	The University’s Actions Following an Initial Assessment	16
12.2.1	Where the Complainant Seeks Resolution under These Procedures.....	16
12.2.2	Where the Complainant Requests That No Formal Complaint Be Pursued Under These Procedures	16
13	NOTICE TO COMPLAINANT AND RESPONDENT OF UNIVERSITY ACTIONS.....	18
14	ADVISORS AND SUPPORT PERSONS	18
15	WRITTEN SUBMISSIONS	19
16	PRESERVATION OF INFORMATION AND TANGIBLE MATERIAL	19
17	OBLIGATION TO PROVIDE TRUTHFUL INFORMATION	19
18	DUTY TO COOPERATE.....	20
19	INTERIM MEASURES.....	20



Policy 6.4 Procedures for Employees
 Draft for Stakeholder Review
 3.21.19

19.1 Overview of Interim Measures 20

19.2 Examples of Interim Measures 21

19.3 Issuance of Interim Measures..... 21

19.4 Requested Review of Decisions Regarding Interim Measures (Excluding Imposition of Temporary Suspension from Employment and Temporary Suspension from Academic Enrollment / Student Status) 22

19.5 Temporary Suspension from Employment..... 22

19.6 Review of Temporary Suspension from Employment 22

19.7 Temporary Suspension of Academic Enrollment / Student Status..... 22

19.8 Review of Temporary Suspension of Academic Enrollment/Student Status 23

19.9 Assistance with Orders of Protection..... 23

20 PENDING CRIMINAL INVESTIGATIONS 23

21 Resolution by Respondent Accepting Responsibility..... 23

22 Resolution by Alternate Resolution 23

23 Resolution by Formal Complaint 25

23.1 Notice to Parties upon the Issuance of a Formal Complaint 25

23.2 Complainant May Withdraw the Formal Complaint..... 25

23.3 Dismissal of a Formal Complaint Based on Academic Freedom/Free Speech 25

23.4 Dismissal of a Formal Complaint for Other Reasons 25

23.5 The Parties' Participation in the Investigation 26

23.5.1 Declining to Participate in the Investigation..... 27

23.6 Consolidation of Reports and Formal Complaints Under these Procedures 27

23.7 Investigation of a Formal Complaint..... 27

23.7.1 Overview of Investigations of a Formal Complaint..... 27

23.7.2 Time Frame of and Time Limitations During the Investigation 28

23.7.3 Investigative Interview Process 29

23.7.4 Evidentiary Materials 29

23.7.5 Expert Testimony and Materials 30

23.7.6 Evidence to be Excluded or Redacted from the Investigative Record..... 30

23.7.7 Draft Investigative Record and the Parties' Review..... 31

23.7.8 Final Investigative Record and Report..... 31

23.8 Threshold Determination by Investigator and Review by Hearing Panel 32

23.9 Hearings..... 33

23.9.1 Overview of Hearing Process 33

23.9.2 Presumption of Non-Responsibility and Standard of Proof 33

23.9.3 Positions of Hearing Panel and Hearing Chair 33

23.9.4 Notice of Hearing..... 34

23.9.5 Request to Reschedule Hearing 34

23.9.6 Newly Discovered Evidence 35

23.9.7 Pre-Hearing Submissions by the Parties..... 35

23.9.8 Hearing Process and Format 38

23.9.9 Deliberations on Findings of Responsibility..... 40

23.9.10 Deliberations on Sanctions and Remedies 40

23.9.11 Hearing Panel Decision 41



Policy 6.4 Procedures for Employees
Draft for Stakeholder Review
3.21.19

23.9.12 Determination of Sanctions by Dean or Unit Head (the “Reviewer”)..... 41
23.9.13 Provision of Hearing Panel Decision and Reviewer’s Determination of Sanction and Remedies to the Parties..... 42
23.10 Appeal of Decision 42
23.11 Appeal Panel Decision is Final..... 44
23.12 Request for a Stay Pending Appeal 44
24 RESTORING RESPONDENT’S REPUTATION UPON A DISMISSAL OF A FORMAL COMPLAINT ... 45
Complaint Form: Report of Prohibited Conduct under Policy 6.4, including Sexual Harassment.. 46



1 EMPLOYEES UNDER THESE PROCEDURES

An employee is a faculty member (defined as a person who holds appointment to an academic title (as specified in the Bylaws of Cornell University, Article XVII)) or a staff member (defined as an employee of Cornell University who is not a faculty member). A graduate or undergraduate teaching or research assistant is treated as an “employee” for the purposes of these procedures for reports or Formal Complaints arising out of performance of those academic assignments.

In situations where the respondent is both a student and an employee, the appropriate University official¹ will determine which procedures apply based on the circumstances surrounding the alleged conduct as determined in their sole discretion. Further, when the respondent is both a student and an employee, the respondent may be subject to any of the sanctions applicable to students or employees under Policy 6.4.

2 DEFINITION OF FORMAL COMPLAINT AND REPORT

A “Formal Complaint” of prohibited conduct is a written document signed by a complainant alleging specific prohibited conduct by a respondent and initiating the resolution process under the Procedures, or a similar written document signed by a university official on behalf of the university.

A “report” of prohibited conduct differs from a Formal Complaint. A report occurs when Title IX becomes aware of an alleged incident of prohibited conduct.

3 UNIVERSITY RIGHT TO ACT

The University will take reasonable and necessary actions to prevent discrimination and harassment; to take appropriate action when it learns directly or indirectly of conduct that

¹ Throughout these procedures, various University officials and offices, such as the Title IX Coordinator, WPLR and DIWD are assigned responsibility for performing specific functions. Named officials are authorized to delegate responsibility to other appropriate University officials and non-university consultants except where such delegation contravenes University policy. Additionally, named officials and their designees may consult with appropriate University officials, the Office of University Counsel, and subject-matter experts.



might violate this policy; and to respond promptly and thoroughly to any such information, whether or not a Formal Complaint is filed under these procedures.

4 DESIGNATION AS COMPLAINANT AND RESPONDENT

A person who is the subject of a report or initiates a Formal Complaint of prohibited conduct under these procedures will be designated as the “complainant.” An employee against whom such a report or Formal Complaint has been made will be designated as the “respondent.” Both the complainant and respondent are referred to as “party” or “parties” throughout these procedures.

5 ACADEMIC FREEDOM AND FREEDOM OF SPEECH AND EXPRESSION

Nothing in these procedures shall be construed to abridge academic freedom and inquiry, principles of free speech and expression, or the university’s educational mission.

For the purposes of these procedures, academic freedom is defined by the Statement on Academic Freedom and Responsibility adopted by the University Faculty on May 11, 1960, which provides:

Academic Freedom for the Faculty means: Freedom of expression in the classroom on matters relevant to the subject and the purpose of the course and of choice of methods in classroom teaching; from direction and restraint in scholarship, research, and creative expression and in the discussion and publication of the results thereof; to speak and write as a citizen without institutional censorship or discipline. . .

Academic freedom is valued very highly at Cornell, and the University Faculty defends it tenaciously; nevertheless, the same University Faculty is disinclined to see the concept abused. Academic freedom does not imply immunity from prosecution for illegal acts of wrongdoing, nor does it provide license for faculty members to do whatever they choose.

Based on the protections afforded by academic freedom, speech and other expression occurring in the context of instruction or research will not be considered prohibited conduct under Policy 6.4 unless this speech or expression meets the definition of harassment under Sections 6.5 or 6.9 of these procedures. Employees have the right to communicate freely outside of the scope of their Cornell employment in their capacity as private citizens, and such speech or expression will not be considered prohibited



Commented [A3]: Note for the Final Draft: The drafting committee recommends that the University Faculty or the AFPS committee review and determine whether to revise and/ or restate the 1960 definition of “academic freedom” which is somewhat dated and may not address issues important to this topic.

conduct unless it meets the jurisdictional requirements set forth herein, as well as the definition of harassment under Sections 6.4 or 6.8.

6 DEFINITIONS OF PROHIBITED CONDUCT

6.1 Aiding Prohibited Conduct

A person aids prohibited conduct if, with the intent to promote or facilitate such conduct, that person helps another person commit the prohibited conduct.

6.2 Attempting to Commit Prohibited Conduct

A person attempts to commit prohibited conduct if, with the intent to commit such conduct, that person engages in conduct directly tending toward completion of the prohibited conduct.

6.3 Dating and Domestic Violence

Dating and domestic violence is any intentional act or threatened act of violence against the complainant committed by (1) a current or former spouse or intimate partner; (2) a person with whom the complainant shares a child; (3) anyone who is protected from the respondent's acts under the domestic or family violence laws of New York; or (4) a person who is or has been in a social relationship of a romantic or intimate nature with the complainant.

Dating and domestic violence also includes behavior that seeks to establish power and control over the complainant by causing the complainant to fear violence to themselves or another person. Such behavior may take the form of harassment, property damage, intimidation, and violence or a threat of violence to one's self (i.e., the respondent) or a third party. It may involve one act or an ongoing pattern of behavior.²

6.4 Protected-Status Harassment (see also Sexual and Gender-Based Harassment)

Protected-status harassment, including sexual and gender-based harassment, occurs when an individual is targeted with verbal, written, visual, or physical conduct based on that person's

² Consistent with the Violence Against Women Act (VAWA), for reporting purposes under the Clery Act, the University will evaluate the existence of an intimate relationship based upon the complainant's statement, taking into consideration the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.



Policy 6.4 Procedures for Employees
Draft for Stakeholder Review
3.21.19

EEEEO-protected class status that unreasonably interferes with the individual's work or academic performance, or creates an intimidating, hostile, or offensive working or learning environment.

The conduct constitutes harassment when the conditions outlined in (1) or (2), below, are present.

1. Submission to or rejection of such conduct is made, either explicitly or implicitly, a term or condition of a person's employment, academic standing, or participation in any University programs or activities or is used as the basis for University decisions affecting the individual (often referred to as "quid pro quo" harassment.)
2. Such conduct creates a hostile environment. A hostile environment exists when the conduct is sufficiently severe, persistent, or pervasive that it unreasonably interferes with, limits, or deprives an individual's participating in or benefitting from the University's education or employment programs or activities. Conduct must be deemed severe, persistent, or pervasive from both a subjective and an objective perspective.

In evaluating whether a hostile environment exists, the University will consider the totality of known circumstances, including, but not limited to:

- The frequency, nature, and severity of the conduct;
- Whether the conduct was physically threatening;
- The effect of the conduct on the complainant's mental or emotional state;
- Whether the conduct was directed at more than one person;
- Whether the conduct arose in the context of other discriminatory conduct;
- Whether there is a power differential between the parties; and
- Whether the conduct implicates concerns related to academic freedom or protected speech.

6.5 Retaliation

Retaliation is adverse action taken against an individual for making a good-faith report of prohibited conduct or participating in any investigation or proceeding under these procedures. Retaliation may include intimidation, threats, coercion, or adverse employment or educational actions. Retaliation may be found even when an underlying report made in good faith was not substantiated. Retaliation may be committed by the respondent, the complainant, or any other individual or group of individuals. Retaliation does not include good-faith actions pursued in response to a report of prohibited conduct.

6.6 Sexual Assault

Sexual assault is (1) sexual intercourse or (2) sexual contact (3) without affirmative consent.

Procedures for Resolution of
Reports Against Employees Under Cornell University Policy 6.4
Effective Date:
Last Updated:

9



Policy 6.4 Procedures for Employees
Draft for Stakeholder Review
3.21.19

1. Sexual intercourse: Sexual intercourse means any penetration, however slight, with any object or body part, as follows: (a) penetration of the vulva by a penis, object, tongue, or finger; (b) anal penetration by a penis, object, tongue, or finger; and (c) any contact, no matter how slight, between the mouth of one person and the genitalia of another person.
2. Sexual contact: Sexual contact means intentional sexual touching, however slight, with any object or body part, whether directly or through clothing, as follows: (a) intentional touching of the lips, breasts, buttocks, groin, genitals, inner thigh, or anus or intentionally touching another with any of these body parts; (b) making another touch anyone or themselves with or on any of these body parts; and (c) intentional touching of another's body part for the purpose of sexual gratification, arousal, humiliation, or degradation.
3. Affirmative consent: 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, as long as those words or actions create clear permission regarding willingness to engage in the 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.

The following are principles that apply to the above definition of affirmative consent:

- Consent to any sexual act or prior consensual sexual activity 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 withdrawn at any time.
- When affirmative consent is withdrawn or can no longer be given, sexual activity must stop.
- A person is incapable of affirmative consent when they are:
 - Less than seventeen years of age;
 - Mentally disabled (a person is mentally disabled when their normal cognitive, emotional, or behavioral functioning renders them incapable of appraising their conduct); or
 - Incapacitated.
- A person is incapacitated when they lack the ability to choose knowingly to participate in sexual activity.
 - A person is incapacitated when they are unconscious, asleep, involuntarily restrained, physically helpless, or otherwise unable to provide consent.
 - Someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent depending on the level of intoxication.
 - Affirmative consent cannot be gained by taking advantage of the incapacitation of another. In evaluating responsibility in cases of alleged incapacitation, the fact



Policy 6.4 Procedures for Employees
Draft for Stakeholder Review
3.21.19

finder asks two questions: (1) did the respondent know that the complainant was incapacitated? If not, (2) should a sober, reasonable person in the respondent's situation have known that the complainant was incapacitated? If the answer to either of these questions is "yes," affirmative consent was absent.

- If the fact finder determines based on a preponderance of the evidence that both parties were incapacitated, the person who initiated the sexual activity alleged to be nonconsensual due to incapacity is at fault.
- Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.
 - Examples of coercion and intimidation include using physically or emotionally manipulative conduct against the complainant or expressly or implicitly threatening the complainant or a third party with negative actions that would compel or induce a reasonable person in the complainant's situation to engage in the sexual activity at issue. Examples of sexual coercion include statements such as "I will ruin your reputation," or "I will tell everyone," or "your career (or education) at Cornell will be over" or "I will post an image of you naked."
 - Examples of force or a threat of harm include using physical force or a threat, express or implied, that would place a reasonable person in the complainant's situation in fear of physical harm to, or kidnapping of, themselves or another person.

6.7 Sexual Exploitation

Sexual Exploitation is intentionally engaging in any of the following:

- Observing another person when that person is nude or engaged in sexual activity without the knowledge and consent of the person observed or allowing another to observe consensual sexual activity without the knowledge and consent of all parties involved;
- Making, sharing, posting, streaming or otherwise distributing any image, photography, video, or audio recording depicting or otherwise recording another person when that person is nude or engaged in sexual activity without the knowledge and consent of the person depicted or recorded;
- Exposing one's genitals to another person without the consent of that person;
- Exposing another person to a sexually transmitted infection without the knowledge and consent of the person exposed; and
- Causing another person to become incapacitated with the intent of making that person vulnerable to nonconsensual sexual assault or sexual exploitation.

6.8 Sexual and Gender-Based Harassment



Policy 6.4 Procedures for Employees
Draft for Stakeholder Review
3.21.19

Sexual harassment is unwelcome sexual advances, requests for sexual favors, or other unwanted conduct of a sexual nature, whether verbal, nonverbal, graphic, physical, or otherwise, when the conditions outlined in (1) or (2), below, are present.

Gender-based harassment is harassment based on gender, sex, sexual orientation, gender identity, or gender expression, which may include acts of aggression, intimidation, or hostility, whether verbal, nonverbal, graphic, physical, or otherwise, even if the acts do not involve conduct of a sexual nature, when the conditions outlined in (1) or (2), below, are present.

1. Submission to or rejection of such conduct is made, either explicitly or implicitly, a term or condition of a person's employment, academic standing, or participation in any University programs or activities or is used as the basis for University decisions affecting the individual (often referred to as "quid pro quo" harassment), including an attempt or solicitation of an unwelcome "prohibited relationship" as defined in Cornell Policy 6.3, Consensual Relationships.

2. Such conduct creates a hostile environment. A hostile environment exists when the conduct is sufficiently severe, persistent, or pervasive that it unreasonably interferes with, limits, or deprives an individual's participating in or benefitting from the University's education or employment programs or activities. Conduct must be deemed severe, persistent, or pervasive from both a subjective and an objective perspective.

In evaluating whether a hostile environment exists, the University will consider the totality of known circumstances, including, but not limited to:

- The frequency, nature, and severity of the conduct;
- Whether the conduct was physically threatening;
- The effect of the conduct on the complainant's mental or emotional state;
- Whether the conduct was directed at more than one person;
- Whether the conduct arose in the context of other discriminatory conduct;
- Whether there is a power differential between the parties; and
- Whether the conduct implicates concerns related to academic freedom or protected speech.

6.9 **Stalking**

Stalking is 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.

- Course of conduct means two or more acts, including but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or



Policy 6.4 Procedures for Employees
Draft for Stakeholder Review
3.21.19

means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

- Reasonable person means a reasonable person under similar circumstances and with similar identities to the complainant.³
- Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

6.10 Violating an Interim Measure

A person violates an interim measure if the measure is an order by a University official and the person to whom the order applies knowingly violates any of the conditions of the order. One common example of an order by a University official is a "no-contact" order.

7 EFFECTIVE DATE OF THESE PROCEDURES

The effective date of these procedures is [to be determined.]

Commented [A4]: Note for Final Draft: The effective date for these procedures has not been determined.

These procedures will apply in all cases where a Formal Complaint of prohibited conduct under these procedures is made on or after the effective date.

Where the date of the alleged prohibited conduct precedes the effective date of these procedures, the definitions of prohibited conduct in existence at the time of the alleged conduct will be used. These procedures, however, will be used to investigate and resolve all Formal Complaints made on or after the effective date of these procedures, regardless of when the conduct occurred.

8 APPLICATION OF UNIVERSITY POLICIES AND PROCEDURES

Appropriate Procedures under Policy 6.4

The University will determine which procedures under Policy 6.4 apply and direct the report or formal complaint accordingly with appropriate notice and information to the complainant (s). To make this determination, the University will consider the status of the respondent and evaluate whether the report or formal complaint concerns interpersonal misconduct (such as

³ This definition is consistent with VAWA.



Policy 6.4 Procedures for Employees
Draft for Stakeholder Review
3.21.19

sexual violence, sexual related misconduct, and sexual and protected status harassment) to be addressed under these procedures or prohibited discrimination (e.g., disparate treatment based on membership in a protected class in employment and academic decisions, including, but not limited to: pay, promotion, and job opportunities) to be addressed under the separate procedures governing such cases (LINK).

Allegations of Violations of other University Policy

If a party submits a report or formal complaint that alleges a violation of another University policy, the Provost when the respondent is a faculty member or the Vice President and Chief Human Resources Officer when the respondent is a staff member, will determine how these allegations will be handled, such as, but not limited to, incorporated in an investigation under these procedures or referring the allegations of the other policy violation to the proper University official. The parties will be notified of the determination. These determinations are not subject to further appeal or review.

9 JURISDICTION

These procedures will generally apply to prohibited conduct by an employee that occurs in the workplace or within the general context of their employment. Prohibited conduct outside of this context may be addressed at the University's discretion under these procedures if the conduct has specific employment-related or institutional consequences. The connection between such conduct and employment will be assessed on a case-by-case basis by the appropriate University official. The University reserves the right to exercise jurisdiction under these procedures if an employee engages in conduct that is deemed egregious and/or detrimental to the best interests of the University. For example, the University reserves the right to exercise jurisdiction if the conduct poses a substantial threat to the University's mission or to the health or safety of University community members, including potentially contributing to or creating a hostile environment on any campus of the University.

10 TIME LIMIT TO FILE FORMAL COMPLAINTS

Formal complaints should be filed under this policy within three (3) years of the date of the alleged incident, or in the case where the conduct alleged occurred over a period of time, from the date of the last act committed. In most situations involving complaints filed later than this time frame, a Formal Complaint will be dismissed as untimely. The University, however, may elect to investigate a report at any time or adjudicate a Formal Complaint when the respondent remains an employee, when [Title IX](#), in consultation with other administrators as appropriate, determine that an investigation and/ or a Formal Complaint is warranted to achieve the community-protective and ethical goals of Policy 6.4 and that resolution under these procedures is practically feasible.



Policy 6.4 Procedures for Employees
Draft for Stakeholder Review
3.21.19

The University's decision to pursue or not pursue a Formal Complaint when a Formal Complaint is made more than three (3) after the date of the alleged incident is not subject to appeal by any party.

This statement of the University's commitment to investigate and address complaints of prohibited conduct under this policy for a period longer than is otherwise set under relevant state or federal laws does not constitute a waiver of any statute of limitations or defenses that might be applicable to the University under state or federal laws.

11 COMPUTATION OF DEADLINES

In computing any time period specified in these procedures, the day of the event, act, or default that initiates the period will be excluded.

12 THE UNIVERSITY'S RESPONSE TO A REPORT OF PROHIBITED CONDUCT

12.1 Initial Assessment

Upon receipt of a report of alleged prohibited conduct by an employee, Title IX will make an initial assessment of the reported information. This initial assessment will include whether the reported information is subject to these procedures or subject to the separate procedures for claims of prohibited discrimination and an analysis of whether immediate reasonable steps have been taken or should be recommended to the unit or college to address the concerns raised by the report. These reasonable steps are determined on a case-by-case basis and are dependent on the conduct alleged and an evaluation of the work environment. The reasonable steps could include, for example, a separation of the parties, including a change in assignment, shift, or work location or administrative leave. Reasonable steps may also include a recommendation to the responsible unit and/or human resource professionals that they offer counseling and/or training for the affected individuals. These immediate reasonable steps do not preclude additional interim measures or the complainant's or the University's pursuit of a resolution under these procedures.

12.1.1 *Where the Complainant's Identity Is Known*

Where the identity of the complainant is known, they will be provided an explanation of available resources and options and will be offered the opportunity to meet promptly with Title IX to discuss those resources and options. In the event, Title IX concludes that the reported information is subject to the separate procedures on prohibited discrimination, it will coordinate a meeting between the complainant and WPLR.

12.1.2 *Where the Complainant's Identity Is Unknown*

Procedures for Resolution of
Reports Against Employees Under Cornell University Policy 6.4
Effective Date:
Last Updated:

15



Policy 6.4 Procedures for Employees
Draft for Stakeholder Review
3.21.19

Where a report is filed but the identity of the complainant is unknown, [Title IX](#) will assess the nature and circumstances of the report, including whether it provides information that identifies the potential complainant, the potential respondent, any witnesses, and/or any other third party with knowledge of the reported incident, and take reasonable and appropriate steps to respond to the report of prohibited conduct consistent with applicable federal and state laws and these procedures, including referring the report to Title IX or DIWD.

12.2 The University's Actions Following an Initial Assessment

Upon completion of the Initial Assessment, [Title IX](#) will determine the course of action under these procedures as follows:

12.2.1 Where the Complainant Seeks Resolution under These Procedures

In any case where the complainant reports prohibited conduct and requests resolution under these procedures, [Title IX](#) will promptly initiate resolution under these procedures.

12.2.2 Where the Complainant Requests That No Formal Complaint Be Pursued Under These Procedures

Where the complainant does not wish to pursue a Formal Complaint under these procedures, the University will honor the complainant's wishes unless doing so would not adequately mitigate the risk of harm to the complainant or other members of the University community or doing so impacts the University's ability to provide a safe and non-discriminatory environment for all members of the University community, including the complainant.

Regardless of whether the complainant chooses to file or participate in a Formal Complaint, [Title IX](#) will assist the complainant who is a student or employee of the University with reasonable and available accommodations, which may include academic, housing, transportation, employment, and other accommodations. For a complainant who is not a student or employee of the University, Title IX may have a limited ability to provide accommodations. [Title IX](#) will provide reasonable accommodations on a case-by-case basis. (See, "19. INTERIM MEASURES" below). Where no Formal Complaint has been filed and an Interim Measure impacts the respondent, the respondent will be provided with written notice of the report, which includes, as known, the date, time, and location of the alleged prohibited conduct and the underlying factual allegations, including the identity of the complainant (if known). Therefore, certain Interim Measures may not be available if the complainant wishes to maintain anonymity.

[Title IX](#) may also take proactive steps, such as training or awareness efforts, to address prohibited conduct under Policy 6.4 in a general way that does not identify the complainant.



Policy 6.4 Procedures for Employees
Draft for Stakeholder Review
3.21.19

Where the complainant declines to participate in an investigation, the University's ability to meaningfully investigate and respond to a report may be limited.

12.2.1.1 University Determination That the Complainant's Request(s) Can Be Honored

If [Title IX](#) determines that the University can honor the complainant's request that no Formal Complaint be pursued under these procedures, the University may nevertheless take other appropriate steps designed to eliminate the reported prohibited conduct, prevent its recurrence, and address its effects on the complainant and the University community. Those steps may include offering the complainant reasonable and available accommodations, conducting targeted prevention and awareness training, and/or providing or imposing other remedies tailored to the circumstances.

The complainant may later choose to pursue a Formal Complaint within the time limits for filing a Formal Complaint under these procedures, subject to whether the University has already investigated and adjudicated a Formal Complaint initiated by the University.

Upon receipt of new or additional information, [Title IX](#) may reconsider the complainant's request that no Formal Complaint be pursued under these procedures and initiate the resolution process, as explained directly below.

12.2.1.2 University Determination That the Complainant's Request(s) Cannot Be Honored

Where [Title IX](#) determines that the University cannot honor the complainant's request that no Formal Complaint be pursued under these procedures, the Title IX Coordinator will promptly initiate a signed, written Formal Complaint on behalf of the University.

The Title IX Coordinator will notify the complainant that the University intends to proceed with a Formal Complaint and will take immediate action as necessary to protect and assist the complainant.

The Title IX Coordinator will make reasonable efforts to protect the privacy of the complainant. However, typically, the complainant's identity would have to be disclosed as part of the University's investigation.

The complainant is not required to participate in any proceedings that follow. However, if the complainant declines to participate in an investigation and/or the adjudicative process under these procedures, the University's ability to investigate meaningfully and respond to a report of prohibited conduct may be limited.

The complainant may not later choose to file a Formal Complaint under these procedures after a Formal Complaint initiated by the University is resolved.



13 NOTICE TO COMPLAINANT AND RESPONDENT OF UNIVERSITY ACTIONS

Title IX will promptly inform the complainant of any actions undertaken by the University that will directly impact the complainant, including the filing of a Formal Complaint.

Title IX will promptly inform the respondent of any actions undertaken by the University that will directly impact the respondent, including the filing of a Formal Complaint or the imposition of Interim Measures that would directly impact the respondent, and provide an opportunity for the respondent to respond to such action(s). (See "19. INTERIM MEASURES" below). Interim Measures become effective when notice of the Interim Measures is provided.

14 ADVISORS AND SUPPORT PERSONS

Each party has the right to select and consult with an advisor of their own choosing.

Both the complainant and respondent also have the right to a support person of their choice to provide emotional support to the party.

Advisors and support persons may be any person, including an attorney, who is not a party or witness or otherwise involved in the case.

Advisors and support persons may accompany the party to all meetings, such as investigative interviews, but may not speak on the party's behalf or otherwise interfere with meetings or proceedings.

Throughout the proceedings, advisors and support persons may also help the party prepare written submissions.

By accepting the role of advisor or support person, all advisors and support persons agree to comply with the rules and processes set forth in Policy 6.4 and these procedures, including rules regarding process privacy.

The University will not interfere with the parties' rights to have an advisor and support person of their choice and fully expects advisors and support persons to adhere voluntarily to Policy 6.4 and these procedures. In extreme cases, where the Title IX Coordinator determines that an advisor's or support person's conduct undermines the integrity of Policy 6.4 or these procedures, the advisor or support person will be prohibited from continuing to serve as advisor or support person in that case. The affected party will be permitted a reasonable period of time to obtain a substitute advisor or support person.



If [Title IX](#) determines that an advisor or support person has a conflict of interest, the advisor or support person will be prohibited from continuing in their role. The affected party will be permitted a reasonable period of time to obtain a substitute advisor or support person.

15 WRITTEN SUBMISSIONS

For all written submissions permitted by these procedures, the documents must be submitted by the parties. Written submissions from an advisor, support person, or other individual made on behalf of a party will not be included in the investigative record.

Where a form is available for a written submission, the party must use the form for the submission. Where required by these procedures, the party must sign the written submission.

16 PRESERVATION OF INFORMATION AND TANGIBLE MATERIAL

Preservation of information and tangible material relating to alleged prohibited conduct is essential for investigations under these procedures as well as law enforcement investigations. Therefore, all persons involved in these procedures, whether as the complainant, the respondent, or a witness, are encouraged, and all employees are required, to preserve all information and tangible material relating to the alleged prohibited conduct. Examples of evidence include electronic communications (e.g., email and text messages), photographs, clothing, and medical information.

The complainant's, the respondent's, or a witness's failure to preserve necessary evidence may affect the University's ability to gather relevant and reliable information, contact witnesses, investigate thoroughly, and respond meaningfully.

In the case of medical information, prompt examinations can be crucial to the collection of forensic or other medical evidence. Individuals who believe they have experienced sexual assault or other forms of prohibited conduct are strongly encouraged to seek immediate medical attention.

17 OBLIGATION TO PROVIDE TRUTHFUL INFORMATION

At all stages of the process, all Cornell University community members are expected to provide truthful information. "Furnishing false information to the University with intent to deceive" is prohibited and subject to disciplinary sanctions under Cornell University's Campus Code of Conduct (Title III, Article II, Section A, subsection e). An employee who does not provide truthful information may be subject to discipline independent of the outcome of proceedings



under this policy. This provision does not apply to reports made or information provided in good faith, even if the facts alleged are not later substantiated.

18 DUTY TO COOPERATE

All members of the University community are expected to cooperate and participate in inquiries, investigations, and resolutions of reports and Formal Complaints of prohibited conduct under these procedures.

19 INTERIM MEASURES

19.1 Overview of Interim Measures

Following a report of prohibited conduct, the complainant and respondent will be provided information about a range of resources, support services, and measures to protect the safety and well-being of the parties and promote an accessible educational and employment environment. Interim Measures are utilized pending resolution of a case under these procedures. Most interim measures are available only to parties who are students or employees of the University. [Title IX](#) will consider possible interim measures for parties who are not students or employees of the University.

Interim Measures might be in the form of support or accommodations for or restrictions upon one or both parties.

Interim Measures will be calibrated to address a perceived risk, but tailored to minimize to the extent possible the impact on the affected party or parties, whose underlying case of prohibited conduct has not yet been adjudicated on the merits.

Interim Measures are designed to accomplish a number of goals:

- to support and protect the safety of the complainant, the respondent, the University's educational and employment environment, and the University community;
- to deter retaliation; and
- to preserve the integrity of the investigation and resolution process pursuant to these procedures.

Interim Measures may be issued based upon a party's request or at the University's own initiative. In all instances, the University will, at its discretion, determine whether any given Interim Measure is reasonable and appropriate.

Interim Measures are available regardless of whether a Formal Complaint has been filed under these procedures.



Policy 6.4 Procedures for Employees
Draft for Stakeholder Review
3.21.19

Interim Measures are available regardless of whether the complainant chooses to report the prohibited conduct to law enforcement.

Interim Measures become effective when notice of the Interim Measures is provided.

Where a Formal Complaint has been filed, typically, Interim Measures will remain in place pending the resolution of the Formal Complaint.

Violations of Interim Measures that are orders by a University official constitute prohibited conduct under these procedures.

19.2 Examples of Interim Measures

Potential Interim Measures for students and employees of the University include but are not limited to:

- assistance obtaining access to counseling, advocacy, or medical services;
- assistance obtaining access to academic support and requesting academic accommodations;
- changes in class schedules;
- assistance requesting changes in work schedules, job assignments, or other work accommodations;
- change in job assignment;
- changes in campus housing;
- safety escorts;
- “No-contact” orders (curtailing or prohibiting contact or communications between or among individuals);
- Temporary suspension from employment; and
- Temporary suspension from academic enrollment / student status.

19.3 Issuance of Interim Measures

[Title IX](#), in consultation with other administrators as appropriate, is responsible for issuing Interim Measures, excluding imposition of temporary suspensions. In each case, [Title IX](#) will designate an appropriate individual in the respondent’s college or unit to be responsible for implementing the Interim Measures.

Interim Measures will be designed in a fair manner and narrowly tailored to minimize to the extent possible any restrictions on those affected.

In issuing Interim Measures, the University will make reasonable efforts to communicate with any impacted party to address safety and emotional and physical well-being concerns.



Interim Measures are not, in and of themselves, permanent resolutions under these procedures and they are not disciplinary actions. Rather, they are accommodations and protective actions taken by the University based on information known at the time that the Interim Measures are issued. Accordingly, the University has the discretion to issue, modify, or remove any Interim Measure at any time additional information is gathered or circumstances change.

19.4 Requested Review of Decisions Regarding Interim Measures (Excluding Imposition of Temporary Suspension from Employment and Temporary Suspension from Academic Enrollment / Student Status)

Both parties may at any time request that [Title IX](#) issue, modify, or remove Interim Measures based upon a change in circumstance or new information that would affect the necessity of any Interim Measures.

19.5 Temporary Suspension from Employment

When a report has been made where immediate action is deemed to be necessary to protect the complainant or University community, the Provost or Vice President and Chief Human Resources Officer, have the discretionary authority to suspend the respondent pending resolution of the underlying case.

Temporary Suspension from employment of a faculty member must be done in accord with the process under the Trustee Dismissal/Suspension Policy and its protocol for issuing emergency suspensions unless or until that policy is amended to reflect the standard and process used by these procedures.

Suspension from employment may include the withdrawal of any or all University privileges and services, including utilization of University premises and facilities, class attendance, participation in examinations, as determined by the President or designee, Provost and Vice President and Chief Human Resources Officer. See also, University Policy 6.11.3, Employee Discipline.

19.6 Review of Temporary Suspension from Employment

Both parties may at any time request that the Provost and Vice President and Chief Human Resources Officer modify or lift a Temporary Suspension from employment based upon a change in circumstance or new information that would affect the necessity of a Temporary Suspension from employment.

19.7 Temporary Suspension of Academic Enrollment / Student Status

Procedures for Resolution of
Reports Against Employees Under Cornell University Policy 6.4
Effective Date:
Last Updated:



In addition to a temporary suspension from employment, the University may impose a temporary suspension from Academic Enrollment/Student Status in accord with the mechanism set forth in Section 15.5 of the Policy 6.4 Student Procedures entitled "Temporary Suspensions Pending Resolution."

19.8 Review of Temporary Suspension of Academic Enrollment/Student Status

A review of a temporary suspension from Academic Enrollment/Student Status will be conducted in accord with the mechanism set forth in Section 15.6 of the Policy 6.4 Student Procedures entitled "Review of Temporary Suspensions."

19.9 Assistance with Orders of Protection

Orders of Protection are court orders and, thus, the University is not able to issue them. However, the Cornell University Police Department (CUPD) (607-255-1111) will assist both the respondent and the complainant (or any member of the Cornell community impacted by an Order of Protection), by helping the parties understand the availability of an order, the potential content and parameters of an order, and the consequences for violating an order.

The CUPD will also assist a protected party in effecting arrest of an individual violating an Order of Protection, if doing so is within the jurisdiction of CUPD.

20 PENDING CRIMINAL INVESTIGATIONS

In cases where there is a criminal investigation, the University process will run concurrently with such investigation. The University may grant temporary delays reasonably requested by law enforcement for evidence gathering.

21 RESOLUTION BY RESPONDENT ACCEPTING RESPONSIBILITY

The Respondent may at any time elect to accept responsibility for alleged prohibited conduct.

22 RESOLUTION BY ALTERNATE RESOLUTION

Alternate Resolution is available in every case in which the parties and the University as represented by the Title IX Coordinator, in consultation with the dean or unit head, or their designee, agree that such resolution efforts are appropriate.

Commented [A5]: Note for Final Draft: The drafting committee recommends that the University convene a separate committee to consider the possibility of enhancements to both this section and the relevant section of the Student procedures, specifically to include mediation, restorative justice, and other alternatives to adversarial proceedings.



Policy 6.4 Procedures for Employees
Draft for Stakeholder Review
3.21.19

The Alternate Resolution process may be initiated instead of filing a Formal Complaint or after a Formal Complaint has been filed. If the Alternate Resolution process is terminated for any reason, the matter may be resolved pursuant to a Formal Complaint under these procedures.

Before the Alternate Resolution process commences, both the complainant and the respondent must agree to explore Alternate Resolution as a potential means of resolution.

Participation in Alternate Resolution is entirely voluntary; the University will neither pressure nor compel either party to participate in the process or to agree to any specific terms. The parties are strongly encouraged, although not required, to consult with their advisors and any support persons during the entire Alternate Resolution process.

The Title IX Coordinator will oversee the Alternate Resolution process and have access to all University records in the matter, including any records or reports prepared during an investigation. Before the Title IX Coordinator approves the initiation of the Alternate Resolution process, the Title IX Coordinator will determine that they have sufficient information about the matter to make these decisions.

The Title IX Coordinator will consult separately with both parties and recommend to the parties the terms of a potential Alternate Resolution agreement. Such terms may include, but are not limited to, any sanctions or remedies that could be imposed under these procedures. The Title IX Coordinator must consult with the dean or unit head, or their designee, as well as provost in the case of a faculty respondent or the Vice President and Chief Human Resources Officer in the case of a staff respondent, before proposing the terms of the Alternate Resolution to the parties. If both parties are satisfied with the Title IX Coordinator's recommendation, the matter will be resolved with a written agreement.

The Title IX Coordinator will provide each party, separately, with a copy of the proposed Alternate Resolution for the party to review, sign, and return. Once a party has returned the signed Alternate Resolution to the Title IX Coordinator, the party has two (2) business days to reconsider and withdraw from the agreement by notifying the Title IX Coordinator in person or in writing.

At any time before a written agreement is effective, the complainant or the respondent may withdraw from the Alternate Resolution process, and the Title IX Coordinator may also, at their discretion, terminate the process.

After the two (2) business days, if neither party withdraws, the terms of the agreement will become effective and the Title IX Coordinator will promptly notify both parties in writing that the agreement is final. A copy of the Alternate Resolution will be provided to the respondent's unit or college and placed in the respondent's personnel file.

Once the agreement is effective, the parties may not appeal the agreement. The parties are expected to honor and comply with the terms of the Alternate Resolution. If either party



violates the Alternate Resolution, that party may be subject to disciplinary action for noncompliance.

If the process is terminated and the matter resolved pursuant to the Formal Complaint resolution process, neither the Title IX Coordinator nor the parties will disclose to the Hearing Panel or Appeal Panel either the fact that the parties had participated in the Alternate Resolution process or any information learned during the process.

23 RESOLUTION BY FORMAL COMPLAINT

If there is no agreement to pursue an Alternate Resolution, or efforts to resolve the matter by Alternate Resolution are unsuccessful, the matter may be resolved pursuant to a Formal Complaint under these procedures.

23.1 Notice to Parties upon the Issuance of a Formal Complaint

At the issuance of a Formal Complaint, the Title IX Coordinator will notify the complainant and the respondent, in writing, of the commencement of an investigation and specifying the alleged prohibited conduct and its date, time, and location, the extent known.

23.2 Complainant May Withdraw the Formal Complaint

The complainant may withdraw a Formal Complaint that they have filed at any time.

23.3 Dismissal of a Formal Complaint Based on Academic Freedom/Free Speech

At any time after a Formal Complaint is filed, the Title IX Coordinator may dismiss a Formal Complaint and close a case where the Title IX Coordinator determines that dismissal of the Formal Complaint is warranted because the alleged prohibited conduct is protected by academic freedom and inquiry, principles of free speech and expression, or the university's academic mission. Review of the Formal Complaint pursuant to this provision may be initiated by the Title IX Coordinator, at the request of the respondent, or by the Dean of the Faculty. The Title IX Coordinator and three faculty members from the Committee on Academic Freedom and Professional Status of the Faculty will make the decision. This decision is not subject to further review.

23.4 Dismissal of a Formal Complaint for Other Reasons

At any time after a Formal Complaint is filed, the Title IX Coordinator may dismiss a Formal Complaint and close a case where the Title IX Coordinator determines:



Policy 6.4 Procedures for Employees
Draft for Stakeholder Review
3.21.19

1. There is no jurisdiction under these procedures.
2. The facts set forth in the Formal Complaint do not constitute prohibited conduct under these procedures.
3. The complainant has failed or refused to cooperate with the investigation such that the investigator is unable to investigate despite reasonable measures, including where the complainant cannot be located, the complainant fails or refuses to be available for interviews or meetings, or the complainant fails to provide necessary information.

If the Title IX Coordinator determines that a Formal Complaint should be dismissed or if the Title IX Coordinator determines that a Formal Complaint should not be dismissed after a request for dismissal pursuant to item number three (3) above, the parties will receive a written decision explaining the reason for the dismissal.

The aggrieved party must commence review of the proposed dismissal within ten (10) business days by submitting a letter explaining why the dismissal is believed to be erroneous, including any written evidence in support of their position. The materials should be submitted to the Title IX Coordinator who will forward them to the Hearing Panel and Hearing Chair (who provides guidance to the Hearing Panel but does not have a vote in a decision)

The Title IX Coordinator will also inform the other party that a request for review has been filed and provide a copy of the aggrieved party's letter and any supporting materials to the other party. The other party will be given an opportunity to respond in writing to the aggrieved party's request for review. This review may take place on the parties' submissions and does not require an in person meeting or hearing.

The Hearing Chair in consultation with the Hearing Panel will establish a reasonable process and timeline for handling the matter.

The Hearing Panel will conduct the review based upon a standard of clearly erroneous, meaning that the Hearing Panel will not disturb the Title IX Coordinator's decision by substituting its own judgment for the judgment of the Title IX Coordinator.

If the Hearing Panel determines that the Title IX Coordinator's decision was clearly incorrect, the Formal Complaint will be reinstated.

If the Hearing Panel determines that the Title IX Coordinator's decision was correct, the Formal Complaint will be dismissed.

The Hearing Panel will provide a written decision to the parties and the Title IX Coordinator.

The decision of the Hearing Panel is final; there is no right to appeal.

23.5 The Parties' Participation in the Investigation



Policy 6.4 Procedures for Employees
Draft for Stakeholder Review
3.21.19

Both the complainant and the respondent may decline to participate in the investigation. The University, however, may continue without a party's participation, reaching findings and issuing sanctions. Additionally, a party's decision not to participate in the investigation will limit the party's subsequent ability to participate in the investigation, as explained below.

23.5.1 Declining to Participate in the Investigation

If a party declines to participate in investigative interviews deemed necessary by the investigator, the investigator will prepare the report and make findings based on the evidence and information available.

Nonetheless, if a party who has so declined to participate in investigative interviews later seeks to participate, upon a finding that there was a compelling reason for the nonparticipation, the investigator may allow participation up until the time the report is finalized. The extent of such participation shall be determined by the investigator in their sole discretion, weighing the impact of a delay on the other party and the University's commitment to prompt, appropriate resolutions of complaints.

23.6 Consolidation of Reports and Formal Complaints Under these Procedures

Generally, at the discretion of the Title IX Coordinator, multiple reports or Formal Complaints under these procedures that are factually related will be joined in one investigation.

At the discretion of the investigator, multiple Formal Complaints, whether or not joined in one investigation, and multiple investigations under these procedures may be joined in one investigation if doing so is likely to result in reliable and more efficient outcomes without causing prejudice to a party or parties or confusion for the fact finders.

Multiple Formal Complaints and investigations may be so joined whether they involve single or multiple complainants or respondents.

23.7 Investigation of a Formal Complaint

23.7.1 Overview of Investigations of a Formal Complaint

The [Title IX](#) office will conduct the investigation. The investigation is designed to be timely, thorough, and impartial and to provide for a fair and reliable gathering of the facts. All individuals involved in the investigation, including the complainant, the respondent, and any third-party witnesses, will be treated with sensitivity and respect. When the respondent is a member of the faculty, the Dean of Faculty will designate a faculty member to serve as a co-investigator. When the respondent is a staff member, the Vice President of Human Resources



Policy 6.4 Procedures for Employees
Draft for Stakeholder Review
3.21.19

will designate a staff member to serve as a co-investigator. These co-investigators will be selected from pools of appropriately trained faculty and staff.

The investigation will generally include individual interviews of the complainant, the respondent, and relevant witnesses. Upon completion of the investigation, the investigator will prepare a final investigative record and an investigative report. The investigative record is a compilation of statements by the parties and witnesses as well as other evidence gathered by the investigator. The investigative report will explain the scope of the investigation and summarize the information gathered.

The complainant and the respondent will have an equal opportunity to participate in the investigation, including an equal opportunity to be heard, submit evidence, and suggest witnesses who may have relevant information. Specifically, during the investigation, each party will have the opportunity to:

- be interviewed by the investigator;
- review their own interview statements prior to the statements being distributed to the other party and included in a draft investigative record;
- provide evidence to the investigator;
- suggest witnesses to be interviewed by the investigator;
- propose questions to be asked of witnesses; and
- review a draft investigative record and comment on it, in writing, before the investigator finalizes the record and prepares an investigative report.

23.7.2 Time Frame of and Time Limitations During the Investigation

Throughout the investigation, both parties will receive reasonable notice of any meetings at which their attendance is requested and the parties will be updated at regular intervals on the status of the investigation.

The investigator will establish reasonable time limits for the various stages of the investigation, including meetings and deadlines for any submissions or responses, and the parties must adhere to these time limits.

The parties may request reasonable extensions that are granted at the discretion of the investigator. Extensions granted to one party will be granted to the other party. Failure to meet deadlines will result in forfeiture of a party's ability to participate in that aspect of the investigation.

If a party declines or fails to participate in a meeting or interview, provide evidence, or suggest witnesses, the party will have waived their right to do so upon the issuance of the final investigative record and report.



23.7.3 Investigative Interview Process

The investigator will gather information from the complainant, the respondent, and other individuals who have relevant information.

The parties will have the opportunity to request in writing witnesses they would like the investigator to interview and questions and topics they would like the investigator to ask witnesses, themselves, and the other party.

The investigator has the discretion to determine the relevance of any proffered witnesses, and, accordingly, the investigator will determine which witnesses to interview.

In general, the investigator will not consider relevant any witnesses who are offered solely for the purpose of providing evidence of a party's character.

Investigative interviews with the parties and any witnesses will be audio recorded.

At the start of an interview session, the investigator will inform an interviewee that the session is being audio recorded.

On request, parties and witnesses will receive copies of audio recordings of their own interviews.

The parties will be provided with transcripts, but not audio recordings, of all witness and other party interviews.

The parties may listen to audio recordings of interviews of the other party and any witnesses during business hours at a secure and private campus location, with access facilitated by the Title IX Coordinator.

All persons being interviewed, including the parties, are prohibited from recording interviews.

In the event of a failure rendering an audio recording of an interview inaudible in whole or in part, the investigator will either reconstruct the interview with input from the interviewee or re-conduct the interview, as the investigator deems necessary. The reconstructed interview statement will become part of the investigative record. The failure to successfully record will not constitute grounds for appeal.

23.7.4 Evidentiary Materials

The investigator will gather relevant available evidentiary materials, including physical evidence, documents, communications between the parties, and electronic records and media as appropriate.

The parties will have the opportunity to request in writing the evidentiary materials they would like the investigator to seek to obtain. When determining whether to pursue a party's request



Policy 6.4 Procedures for Employees
Draft for Stakeholder Review
3.21.19

for evidentiary materials, the investigator will consider a variety of factors, including but not limited to their relevance to the investigation and whether the materials are reasonably available.

23.7.5 Expert Testimony and Materials

If the investigator determines that expertise on a topic will assist in making its determinations, upon the investigator's own initiative or at the request of a party, the investigator may include in the investigative record medical, forensics, technological, or other expert testimony and materials (such as writings and recordings) that the investigator deems relevant and reliable.

The investigator has the discretion to determine the relevance and reliability of any expert testimony and materials, and, accordingly, the investigator will determine what, if any, expert testimony and materials will be included in the investigative record.

Requested expert testimony or materials not included in the investigative record will not be considered by the Hearing Panel.

The results of polygraph tests and other "lie-detection" techniques are inadmissible in the proceedings.

23.7.6 Evidence to be Excluded or Redacted from the Investigative Record

At the request of a party or witness, the investigator will exclude and, as necessary, redact content falling into one of the four categories enumerated below from the report provided to the Hearing Panel.

1. Prior Sexual History: Generally, an individual may exclude evidence of their own prior sexual history with anyone other than a party.
2. Prior or Subsequent Conduct: Evidence of an individual's prior or subsequent disciplinary findings or record is excluded from the Hearing Panel's consideration of responsibility. Such information will be provided to the Hearing Panel for the determination of sanctions in cases where there is a finding of responsibility. (See, Section 23.9.7.6)
3. Mental Health Treatment and/or Diagnosis: Generally, an individual may exclude evidence of their own mental health diagnosis and/or treatment.
4. Sensitive Personal Identifying Information and Medical Records: Sensitive personal identifying information, such as Social Security numbers and irrelevant information contained in medical records, will be excluded.



Policy 6.4 Procedures for Employees
Draft for Stakeholder Review
3.21.19

The investigator will also exclude and, as necessary, redact content that is impermissible under applicable law.

Exclusions and redactions will be noted and thereby become part of the investigative record.

Excluded or redacted content not included in the investigative record will not be considered by the Hearing Panel.

23.7.7 Draft Investigative Record and the Parties' Review

Upon completion of the investigation, the investigator will prepare and provide to the parties an electronic or hard copy of a draft investigative record that will include:

- transcripts (but not audio files) of all interviews by the investigator with the parties and any witnesses; and
- copies of any documents, electronic records, and media and photographs or descriptions of physical materials collected during the course of the investigation.

As part of the investigative process, both parties have an opportunity to review and comment upon a draft investigative record before the investigator finalizes it and issues an investigative report.

The parties will have ten (10) business days to review the draft investigative record and submit in writing:

- comments about content, including requests for redaction;
- requests for additional meetings with the investigator; and
- requests for the investigator to conduct further investigation or questioning.

The parties' written comments and requests will become part of the final investigative record, except to the extent content is deemed subject to exclusion or redaction pursuant to these procedures.

The investigator has discretion whether to conduct any additional requested meetings, interviews, or questioning.

The parties may request extensions that will be granted, if reasonable, at the discretion of the investigator. Any extension granted to one party will be granted to the other party.

Submissions made after their due date will not be considered.

23.7.8 Final Investigative Record and Report

The investigator will issue a final investigative record and an investigative report.



Policy 6.4 Procedures for Employees
Draft for Stakeholder Review
3.21.19

The investigative record is a compilation of the investigative interviews, evidentiary materials, and expert testimony and materials, if any.

In the report, the investigator will explain the scope of the investigation and summarize the information gathered during the investigation. At their discretion, the investigator may identify contested and uncontested facts, highlight inconsistencies, and address relevancy of evidence. The investigator will not render an opinion on responsibility, other than to make a threshold determination as to whether there is sufficient evidence to proceed to a hearing (see below.)

23.8 Threshold Determination by Investigator and Review by Hearing Panel

Upon completion of the investigation, the investigator will make a threshold determination as to whether there is sufficient evidence to advance the Formal Complaint to a hearing.

If the investigator concludes that when viewing the evidence in the light most favorable to the complainant, there is no reasonable basis to find that the respondent committed the alleged prohibited conduct, the investigator will make the threshold determination that there is not sufficient evidence to advance the Formal Complaint to a hearing. The proceedings will be terminated, the Formal Complaint dismissed, and the parties so notified.

If the investigator makes a threshold determination that there is not sufficient evidence to advance the Formal Complaint to a hearing, the investigator will provide the parties with a written decision explaining the threshold determination.

The complainant will be given an opportunity to seek review by a Hearing Panel. The complainant must commence the review within ten (10) business days by submitting a letter explaining why they think the investigator's threshold determination is wrong including any evidence in support of their position. The materials should be submitted to the Title IX Coordinator, who will forward them to the Hearing Panel and Hearing Chair (who provides guidance to the Hearing Panel but does not have a vote in a decision).

The respondent will be informed that a request for review has been filed and provided a copy of the complainant's letter and any supporting materials.

The Hearing Chair in consultation with the Hearing Panel will establish a reasonable process and timeline for handling the matter. The respondent will be given an opportunity to respond to the complainant's request for review.

The Hearing Panel will conduct its review de novo on the written record and may affirm or reverse the decision of the investigator at its discretion.

If the Hearing Panel determines that the complainant has shown that there is sufficient credible evidence to advance the Formal Complaint to a hearing, the Formal Complaint will be reinstated and resolved according to these procedures.

If the Hearing Panel determines that the complainant has not shown that there is sufficient credible evidence to advance the Formal Complaint to a hearing, the Formal Complaint will not be reinstated.

Procedures for Resolution of
Reports Against Employees Under Cornell University Policy 6.4
Effective Date:
Last Updated:



Policy 6.4 Procedures for Employees
Draft for Stakeholder Review
3.21.19

The Hearing Panel will provide a written decision to the parties and the Title IX Coordinator.

The decision of the Hearing Panel is final; there is no right to appeal.

23.9 Hearings

23.9.1 Overview of Hearing Process

Findings of responsibility and determinations regarding sanctions and remedies are made through a hearing process conducted by a three (3) member Hearing Panel and a non-voting Hearing Chair.

The hearing is intended to provide the parties with a fair opportunity to present relevant information to the Hearing Panel and enable the Hearing Panel to make informed decisions regarding responsibility and sanctions/remedies.

The parties are entitled to provide brief written opening statements and oral and written closing statements and to testify.

Through a pre-hearing submission process explained below, the parties are also entitled to propose questions/topics for those testifying.

The parties will also be asked to submit a written or recorded Impact/Mitigation Statement, which may be submitted up to the start of the hearing.

Throughout the hearing, the parties with their advisor(s) and support person, if applicable, will be in separate rooms.

The parties may never directly address each other.

The Hearing Panel and Hearing Chair conduct all questioning.

23.9.2 Presumption of Non-Responsibility and Standard of Proof

The respondent will be presumed “not responsible” unless and until a Hearing Panel determines the respondent is responsible.

The Hearing Panel will determine whether the respondent is responsible by a majority vote using a preponderance of the evidence standard. This means that to find the respondent responsible for any prohibited conduct, a majority of the Hearing Panel must be satisfied, based upon the evidence presented, that it is more likely than not that the respondent committed all of the elements of the alleged prohibited conduct. If the Hearing Panel does not find the respondent responsible for any prohibited conduct subject to resolution under these procedures under Policy 6.4 or any supplemental jurisdiction, it will dismiss the case. If the Hearing Panel finds that the respondent is responsible for any prohibited conduct subject to resolution under these procedures, it will consider appropriate sanctions and remedies.

23.9.3 Positions of Hearing Panel and Hearing Chair

Procedures for Resolution of
Reports Against Employees Under Cornell University Policy 6.4
Effective Date:
Last Updated:

33



Policy 6.4 Procedures for Employees
Draft for Stakeholder Review
3.21.19

The Hearing Panel will include trained faculty and staff members selected through an appropriate process established in advance by the University. In any case involving a faculty member respondent, panel members from the faculty will comprise the majority of the panel members. In a case involving a staff member respondent, staff panel members will comprise the majority of the panel members.

The position of Hearing Chair will be filled through an appropriate process established in advance by the University.

The Hearing Chair and Hearing Panel members will receive annual training as required by law.

The Hearing Chair will provide guidance to the Hearing Panels and serve as a gatekeeper by making evidentiary and procedural rulings both prior to and during the hearing.

The Hearing Chair will draft the Hearing Panel decision, reflecting the Hearing Panel's findings of fact and rationales for their determinations regarding both responsibility and sanctions and remedies. The Hearing Chair will obtain the Hearing Panel's approval before issuing a written decision.

Given this significant role, the Hearing Chair will be non-voting.

23.9.4 Notice of Hearing

At the completion of an investigation, if a case is referred to a Hearing Panel for a hearing, a Notice of Hearing will be sent to the parties as soon as practicable. The notice will include the charges at issue; a brief summary of the alleged prohibited conduct; the date, time, and place of the hearing; the name of the Hearing Chair; and, if determined, the Hearing Panel members.

If the notice does not include the name of the Hearing Panel members, the parties will be so notified, in writing, at a later time, prior to the hearing.

All efforts will be made to provide the Notice of Hearing no later than seven (7) business days prior to the hearing and to schedule the hearing as soon as practicable.

Upon receipt of written notice of the names of the Hearing Chair and Hearing Panel members,⁴ if a party believes that they have a potential conflict of interest with either a Hearing Panel member or Hearing Chair, the party should notify the Title IX Coordinator, who will forward the notification to the Hearing Chair. The notification must be in writing, made within two (2) business days of the notice, and include facts substantiating the claim of conflict. The Hearing Chair has discretion whether to remove a member of the Hearing Panel or to recuse themselves.

23.9.5 Request to Reschedule Hearing

⁴ Notice of the Hearing Chair may precede notice of the Hearing Panel members.



Commented [A6]: Note for Final Draft: The drafting committee recommends that a substantive component of training provided to panel members include input from graduate student representatives to ensure this important perspective is fully understood.

Policy 6.4 Procedures for Employees
Draft for Stakeholder Review
3.21.19

Either party may request to have a hearing rescheduled. Absent extenuating circumstances, requests to reschedule must be submitted at least three (3) business days prior to the hearing. A request to reschedule a hearing must be supported by a compelling reason for the delay. Given the number of individuals involved in a hearing, and the attendant difficulty of scheduling and rescheduling them in a timely manner, it may not be possible to accommodate all scheduling requests. The Hearing Chair may also reschedule a hearing, without a request by the parties, when there is reasonable cause to do so.

23.9.6 Newly Discovered Evidence

If after the issuance of the final investigative record and investigative report and prior to the issuance of the Hearing Panel decision, a party seeks to present a witness or introduce evidence not requested prior to the hearing and not disclosed to the investigator, the Hearing Chair may grant such request upon a showing that the witness or evidence is relevant, material, newly discovered, and could not have been discovered during the investigation with due diligence.

Where a Hearing Chair permits a party to introduce a newly discovered witness or evidence, to prevent surprise to the other party, the Hearing Chair will reschedule or adjourn the hearing for the investigator to investigate the newly discovered witness or evidence.

The Hearing Chair will also re-open the pre-hearing submission process, as appropriate, so that the parties may respond to the new information.

23.9.7 Pre-Hearing Submissions by the Parties

Prior to a hearing, the parties will be asked in writing by the Title IX Coordinator to make certain decisions and requests regarding the conduct of the hearing. This process is designed to ensure that the hearing is conducted in as equitable, respectful, and efficient a manner as possible.

There are two stages at which the parties will be asked to make Pre-Hearing Submissions.

- First, the parties will be asked to submit in writing (1) opening statements and (2) names of any requested witnesses.
- Second, once witnesses are approved, the parties will be asked to submit in writing any proposed questions or topics for individuals who might testify, including themselves, as explained below.

All Pre-Hearing Submissions are optional but waived if not completed by the stated deadlines, including any approved extensions.

Prior to the hearing, the Title IX Coordinator will distribute each party's Pre-Hearing Submissions to the other party for their review.

23.9.7.1 First Pre-Hearing Submission – Written Opening Statements and Witness Requests

Upon providing the parties with copies of the final investigative record and report, the Title IX Coordinator will instruct the parties, in writing, that they have the opportunity to prepare a written opening statement and submit a written list of proposed witnesses.



Policy 6.4 Procedures for Employees
Draft for Stakeholder Review
3.21.19

The parties will be given five (5) business days for such submissions.

Within the five (5) business days, the parties may request extensions that will be granted, if reasonable, at the discretion of the Hearing Chair. Any extension granted to one party will be granted to the other party. Delays simply to prolong the process will not be permitted.

23.9.7.2 Written Opening Statements

The parties may prepare a written opening statement, not to exceed 2500 words.

These statements are the parties' opportunity to tell the Hearing Panel why it should find in the party's favor.

These statements must be signed by the parties.

In presenting their side, the parties should be responsive to the investigative record by directly addressing and responding to specific information contained in the investigative record and citing specific page numbers.

The parties may want to call the Hearing Panel's attention to specific interview statements or evidentiary materials contained in the investigative record. Again, the parties should include specific page citations to the final investigative record.

The parties may not add or address information not contained in the investigative record, as the Hearing Panel will not consider new information. Nor may the parties address issues that pertain to sanctions and remedies. The Hearing Panel does not consider these issues when determining responsibility. The parties may appropriately raise such issues in their Impact/Mitigation Statements.

23.9.7.3 Witness Requests

All interview statements contained in the final investigative record become part of the evidence before the Hearing Panel. If a party wants the Hearing Panel to hear directly from a witness, the party must submit a written request within the five (5) business days.

Such a request should include:

1. The names of proposed witnesses, including the investigator, if the party requests that the investigator testify.
2. For each proposed witness an explanation of why the individual's presence is relevant and helpful to the Hearing Panel in determining responsibility. For example, the party should explain why a witness's in person testimony is needed in addition to their written interview statement.
3. The parties are encouraged to include proposed questions for or general topics to be addressed by each witness. The parties will have an opportunity to supplement and revise their requests for questions and topics once they learn who will testify at the hearing. However, by indicating proposed questions and topics at this juncture, the parties will help the Hearing Chair and Hearing Panel understand why the parties would like to hear from specific individuals. The



Policy 6.4 Procedures for Employees
Draft for Stakeholder Review
3.21.19

parties may request only witnesses who were interviewed by the investigator during the investigative process.

4. The Hearing Chair and Hearing Panel will review the parties' witness requests. The Hearing Panel will rule on the parties' requests and shall grant reasonable requests that will not unduly burden the hearing process with duplicative or unnecessary cumulative testimony.
5. The Hearing Chair, in consultation with the Hearing Panel, may call witnesses not requested by the parties, in the Hearing Panel's discretion, which decision is not appealable.
6. The Hearing Chair will provide the parties with a witness list.

23.9.7.4 Second Pre-Hearing Submission – Questions and Topics

The parties will be informed in writing that they have an opportunity to propose, also in writing:

1. Questions and topics for the witnesses. The parties may:
 - a. revise and supplement any questions and topics they already submitted and
 - b. propose new questions and topics.
2. Questions and topics for themselves and the other party. The parties are not required to commit to testifying at this juncture, but are encouraged to prepare for the eventuality that they and the other party would testify by submitting proposed questions and topics.

The Hearing Chair will establish a reasonable deadline for the submissions, typically no longer than five (5) business days.

Within the deadline established by the Hearing Chair, the parties may request extensions that will be granted, if reasonable, at the discretion of the Hearing Chair. Any extension granted to one party will be granted to the other party. Delays simply to prolong the process will not be permitted.

In exceptional circumstances, the Hearing Chair, in consultation with the Hearing Panel, may permit late requests only where the necessity for such could not have been reasonably anticipated in advance.

The Hearing Chair, in consultation with the Hearing Panel, will determine which of the parties' requested questions will be asked or topics covered.

The Hearing Chair will approve in substance all questions or topics that are relevant and that are not prohibited by these procedures or applicable laws, unduly prejudicial, or cumulative of other evidence.

At the hearing, the parties will have an opportunity to propose additional questions and topics.

The Hearing Panel and Hearing Chair will be permitted to ask their own questions.

23.9.7.5 Impact/Mitigation Statement

The parties will be permitted, but not required, to prepare a written or recorded Impact/Mitigation Statement relevant to any sanctions. The parties may submit the statement up until the start of a hearing. These statements will be provided to the Hearing Chair.

23.9.7.6 Information on Respondent's Prior Discipline to Hearing Panel

Procedures for Resolution of
Reports Against Employees Under Cornell University Policy 6.4
Effective Date:
Last Updated:

37



Policy 6.4 Procedures for Employees
Draft for Stakeholder Review
3.21.19

Human Resources shall review and as relevant provide information to the Hearing Chair concerning: 1) respondent's prior disciplinary record related to sexual misconduct or other forms of prohibited discrimination; 2) an employee's discipline record from another employer related to sexual misconduct or prohibited discrimination; or 3) a criminal conviction related to sexual misconduct or prohibited discrimination. This information will be disclosed to the Hearing Panel only if the Hearing Panel makes a finding of responsibility of prohibited conduct under Policy 6.4 and exclusively for use in the determination of recommended sanctions.

23.9.8 Hearing Process and Format

23.9.8.1 Overview of Hearing Process and Format

All hearings will be private. The only persons present will be the parties, their advisor(s) and support person, witnesses (when testifying), the Hearing Panel and Hearing Chair, the investigator, and any staff necessary for the conduct of the hearing.

The parties with any advisors and support persons will be in separate, private rooms.

The parties will participate remotely via a secure audio-visual connection, with the exception that when a party testifies and gives their oral closing statement, generally, they should do so in the presence of the Hearing Panel and Hearing Chair; they may be accompanied by their advisors and support persons.

Witnesses may be present only for their own testimony.

The Hearing Chair, in consultation with the Hearing Panel, may establish reasonable time limits, rules, and format, providing the parties with equal opportunities to participate.

Formal rules of evidence will not apply.

Evidence that was excluded or redacted from the investigative record as impermissible under these procedures or applicable law will not be admissible at the hearing.

Typically, the format of the hearing will be as follows:

- Introduction by the Hearing Chair. The Hearing Chair will explain the hearing process, address any necessary procedural issues, and answer questions.
- Testimony by the complainant.
- Testimony by the respondent.
- Testimony by any witnesses.
- Closing statements by the complainant followed by the respondent.

23.9.8.2 Hearing will be Audio-Recorded

The hearing will be audio-recorded; the deliberations of the Hearing Panel will not be audio-recorded.

In the event of any failure rendering the audio recording of the hearing inaudible in whole or in part, the record will be recreated as necessary, whether in its entirety or for any inaudible portions, with input



Policy 6.4 Procedures for Employees
Draft for Stakeholder Review
3.21.19

from the parties, any witnesses whose testimony is at issue, the Hearing Panel, and Hearing Chair. Such failure will not constitute grounds for appeal.

Individuals appearing before the Hearing Panel, whether as a party or witness, are prohibited from recording any portion of the hearing.

Hearing Panel members are also prohibited from recording any portion of the hearing.

23.9.8.3 Testimony

Testimony is conducted through a question-and-answer format.

Questioning will be primarily conducted by the Hearing Panel, but the Hearing Chair may supplement the Hearing Panel's questioning. The Hearing Chair will ask persons being questioned to affirm that they will testify truthfully.

Both the complainant and the respondent may testify or decline to testify and may make their election when their turn to testify arises.

If a party testifies, they are expected to answer all questions asked.

At the conclusion of testimony by any individual, there will be a brief adjournment so that the parties may propose additional questions, which may be approved at the discretion of the Hearing Chair, in consultation with the Hearing Panel. A party who testifies will be given full opportunity to propose supplemental questions that they wish to answer. The Hearing Chair, in consultation with the Hearing Panel, reserves the right to call a witness not on the witness list but previously interviewed by the investigator. In such case, the parties will be given time to propose questions for the witness.

If a party proposes a witness not requested prior to the hearing, but interviewed by the investigator, the Hearing Chair, in consultation with the Hearing Panel, may grant the request where the necessity for such could not have been reasonably anticipated in advance.

23.9.8.4 Closing Statements

The parties may provide both oral and written closing statements.

This is the opportunity for the parties to marshal the evidence presented to the Hearing Panel and suggest inferences and conclusions.

The parties may not add or address information not provided to the Hearing Panel, as the Hearing Panel will not consider new information. Nor may the parties address issues that pertain to sanctions and remedies. The Hearing Panel does not consider these issues when determining responsibility. The parties may appropriately raise such issues in their Impact/Mitigation Statements.

The Hearing Chair will establish a time limit for brief oral closing statements, typically around five (5) minutes.

The Hearing Chair will also set the schedule for submission of written closing statements. The parties should assume that deliberations will commence immediately following the hearing, in which case the

Procedures for Resolution of
Reports Against Employees Under Cornell University Policy 6.4

Effective Date:

Last Updated:

39



Policy 6.4 Procedures for Employees
Draft for Stakeholder Review
3.21.19

parties will be expected to submit written closing statements shortly after the oral closing statements. If there is an adjournment for deliberations, the Hearing Chair may provide the parties with limited additional time to submit their statements.

Each party's written statement will be limited to 2000 words and to the evidence contained in the investigative record and hearing. The written statements will be distributed to the other party, Hearing Chair, and Hearing Panel for their review.

These statements must be signed by the parties.

23.9.9 Deliberations on Findings of Responsibility

After closing arguments, the Hearing Panel may begin its deliberations.

Deliberations will be in private and they will not be audio-recorded.

The Hearing Chair may participate in deliberations but may not vote.

The Hearing Panel will make its decision based upon a majority vote.

Deliberations will be completed as expeditiously as possible.

23.9.10 Deliberations on Sanctions and Remedies

A Hearing Panel that finds the respondent responsible will continue its deliberations to consider appropriate potential sanctions and remedies.

Prior to deliberating on sanctions and remedies, the Hearing Chair will distribute to the Hearing Panel any written or recorded Impact/Mitigation Statements previously submitted by the parties, subject to any redactions required by law and the information provided to the Hearing Chair concerning respondent's prior and subsequent conduct and/ or criminal record. (See, Section 23.9.7.6) (An employment record and/or criminal record being considered solely for sanctions will not be shared with the complainant.)

Deliberations will be in private and they will not be audio-recorded.

Deliberations will be completed as expeditiously as possible.

The Hearing Chair may participate in deliberations but may not vote.

The Hearing Panel will recommend a range of appropriate potential sanctions and remedies by a majority vote to the Dean or unit head (the "Reviewer") where respondent is employed.

In evaluating sanctions and remedies, the Hearing Panel will consider:

- the severity of the prohibited conduct;
- the circumstances of the prohibited conduct;
- the impact of the prohibited conduct and sanctions and remedies on the complainant;
- the impact of the prohibited conduct and sanctions and remedies on the community;
- the impact of the prohibited conduct and sanctions and remedies on the respondent;

Procedures for Resolution of
Reports Against Employees Under Cornell University Policy 6.4

Effective Date:

Last Updated:

40



Policy 6.4 Procedures for Employees
Draft for Stakeholder Review
3.21.19

- prior discipline related to sexual misconduct by the respondent and any criminal convictions related to sexual misconduct;
- the goals of Policy 6.4 and these procedures; and
- any other mitigating, aggravating, or compelling factors.

The following sanctions and remedies should be considered by the Hearing Panel:

- Measures similar in kind to the Interim Measures specified under these procedures.
- Appropriate educational steps (such as alcohol or drug education, counseling).
- Restrictions or loss of specified privileges at the University for a specified period of time.
- Oral warning.
- Written discipline.
- Disciplinary probation for a stated period.
- Demotion.
- Removal from administrative or other position held in addition to primary position.
- Salary reduction or other monetary penalty.
- Unpaid suspension of employment; and
- Termination of employment.

The Hearing Panel may also recommend to the Reviewer that the University take measures on campus to remedy the effect or prevent the reoccurrence of such prohibited conduct.

23.9.11 Hearing Panel Decision

The Hearing Panel Decision will include:

- The specific prohibited conduct for which the respondent was found responsible and not responsible,
- the findings of fact and the rationale for the Hearing Panel's determinations regarding both responsibility and any recommended sanctions and remedies, and
- any dissenting opinion in the Hearing Panel decision.

The decision may incorporate and reference any portions of the proceedings, including the investigative record and report, as the Hearing Panel deems appropriate.

Immediately after issuing the Hearing Panel Decision, Hearing Panel members will destroy any notes they took during the hearing.

23.9.12 Determination of Sanctions by Dean or Unit Head (the "Reviewer")

The unit head, dean or designee will serve as Reviewer and determine the appropriate sanctions if the Hearing Panel has concluded that the respondent is responsible for prohibited conduct, utilizing the recommendations of the Hearing Panel. During this review, the Reviewer may consult with university counsel and appropriate university officials, including in the case of staff, the respondent's supervisor and in the case of faculty, the Provost or designee.



Policy 6.4 Procedures for Employees
Draft for Stakeholder Review
3.21.19

The Reviewer may also recommend to Title IX that the University take measures on campus to remedy the effects or prevent the reoccurrence of such prohibited conduct.

Sanctions and remedies will be effective immediately unless otherwise specified by the Reviewer.

**23.9.13 *Provision of Hearing Panel Decision and Reviewer's
Determination of Sanction and Remedies to the Parties***

The Title IX Coordinator will simultaneously provide the parties with the Hearing Panel's Decision on responsibility and the Reviewer's determination of sanctions and remedies (the "Decision.")

23.10 Appeal of Decision

Both the complainant and the respondent may appeal the Decision.

All appeals will be heard by a three (3) member Appeal Panel that includes the Provost, the Vice President for Student and Campus Life and the Vice President for Human Resources and Chief Human Resources Officer, or their designee.

Appeals may be brought only upon one or more of the following grounds:

- The Hearing Panel rendered a decision on responsibility that is clearly erroneous.
- A University official or officials (including the Hearing Panel and/ or Reviewer) assigned responsibility for performing specific functions by these procedures, violated the fair application of relevant University policies, procedures, and such violation may have had a prejudicial effect upon the outcome.
- A University official or officials (including the Hearing Panel and/ or Reviewer) assigned responsibility for performing specific functions by these procedures, committed a prejudicial error in interpreting Policy 6.4, these procedures, and/ or, applicable university policies or procedures.
- The remedial actions awarded the complainant unreasonably affect the respondent.
- The sanctions for the respondent are not commensurate with the violation of University policy or are unjust.
- New evidence was discovered after the Hearing Panel's decision that could not have readily been discovered before the decision, which would probably change the outcome.
- The Reviewer's determination of the sanctions deviated without reasoned explanation from the range recommended by the Hearing Panel.

A party may commence an appeal by submitting a written statement to the Title IX Coordinator within ten (10) business days of issuance of the Decision.

The appeal statement must set forth:

- the determination(s) being appealed,
- the specific ground(s) for the appeal, and

Procedures for Resolution of
Reports Against Employees Under Cornell University Policy 6.4
Effective Date:
Last Updated:

42



Policy 6.4 Procedures for Employees
Draft for Stakeholder Review
3.21.19

- the facts supporting the grounds.

The appeal statement will be limited to 3,500 words.

Failure to submit an appeal within the ten (10) business days or any approved extension constitutes waiver of the right to appeal.

Within the ten (10) business days, a party may request an extension of time by submitting a request to the Title IX Coordinator explaining the reason(s) for the request. The Appeal Panel will have discretion to grant such a request upon a finding of good cause for the delay.

A copy of the appeal statement will be provided to the other party, who, within ten (10) business days may submit a written response to the Title IX Coordinator. The response should address both the specific ground(s) for appeal set forth in the appealing party's statement and the specific facts asserted by the appealing party. The response will be limited to 2,500 words.

A copy of the appeal statement will also be provided to the Reviewer, or their designee, who may submit a statement to the Appeal Panel for its consideration, which response will also be limited to 2,500 words.

The Appeal Panel will establish a reasonable schedule for issuing a written decision, typically no later than thirty (30) business days after the appeal is submitted.

The Appeal Panel decision will be based solely upon the Case Record⁵, written submissions of the parties and any statement provided by the Reviewer.

The decision must be by a majority vote of the Appeal Panel and will include the rationale for the Appeal Panel's decision and any dissenting opinion.

Findings of fact will not be set aside unless clearly erroneous.

Harmless error will be ignored.

⁵ The Case Record will include: the audio recording of the hearing, the Hearing Panel's Decision and recommended appropriate sanctions, the Reviewer's determination on sanctions, the final investigative record and report, the parties' pre-hearing submissions, the written witness list, written opening and closing statements, written submissions permitted by these procedures made during the hearing, the parties' Impact/Mitigation Statements (if considered by the Hearing Panel), and information concerning respondent's prior misconduct. The Case Record may also include a transcript of the hearing.



Policy 6.4 Procedures for Employees
Draft for Stakeholder Review
3.21.19

The Appeal Panel may affirm the decision or sustain any of the above-specified grounds for appeal, in which case the Appeal Panel may:

- reverse a finding;
- change a sanction or remedy;
- remand a case to the original Hearing Panel and/ or the Reviewer for clarification;
- remand a case to the original Hearing Panel if possible for a new hearing or remand a case to a newly composed Hearing Panel if there were procedural violations; or
- remand a case to the original investigator if possible for a new investigation or remand a case to a new investigator if there were procedural violations in the investigation.

If the Appeal Panel calls for the admission of new evidence, if possible, it will remand the case to the Hearing Panel from which it originated for a new hearing.

Upon remand from the Appeal Panel, as necessary and possible, a Hearing Panel may remand a case to the investigator from which it originated for further investigation.

23.11 Appeal Panel Decision is Final

The Appeal Panel decision is the final determination of the matter by the University and is not subject to any additional review, appeal or grievance or any other internal University mechanisms.⁶ This procedure specifically eliminates recourse to Trustee, college and AFPS committee grievance processes. However, nothing in these procedures abrogates post-adjudication rights as provided by state and federal law.

23.12 Request for a Stay Pending Appeal

The Appeal Panel has discretion to stay any sanctions pending a final decision on the appeal.

It may, but is not required to, stay a sanction where the appealing party demonstrates the need for a stay by a showing of unreasonable hardship or other extenuating circumstances.

An application for a stay must be submitted to the Title IX Coordinator. The Title IX Coordinator will provide a copy of the stay application to the Appeal Panel and the other party,

⁶ The sole exception to this provision is that employees represented by a collective bargaining agreement retain the opportunity to grieve under the applicable collective bargaining agreement.



Policy 6.4 Procedures for Employees
Draft for Stakeholder Review
3.21.19

who is entitled to respond to the stay application by submitting to the Title IX Coordinator a written response.

The Appeal Panel will set a reasonable timeline for handling the stay application, including a deadline for the other party to respond to the stay application.

The Appeal Panel has discretion to reconsider its decision on a stay at any time during the appeal.

The stay expires at the conclusion of the appeal.

24 RESTORING RESPONDENT'S REPUTATION UPON A DISMISSAL OF A FORMAL COMPLAINT

Upon completion of all proceedings, including any appeals, if a Formal Complaint has been dismissed, where appropriate, the Title IX Coordinator will attempt to restore the reputation of the respondent. To the extent permissible by law and University policy, the Title IX Coordinator may take such steps as deleting records and, unless the respondent prefers otherwise, notifying persons who participated in the proceedings of the dismissal and/or making a public announcement of the outcome.





Cornell University
Division of Human Resources

COMPLAINT FORM: REPORT OF PROHIBITED CONDUCT UNDER POLICY 6.4, INCLUDING SEXUAL HARASSMENT

If you believe that you have been subjected to prohibited conduct under Policy 6.4, including sexual harassment, you are encouraged to report to Cornell in the way easiest for you.

This form is not required.

A report may be made to your human resources representative¹, Workforce Policy and Labor Relations² or via the web [here](#)

Please provide the following information:

Name:

Contact Information:

Preferred Contact Method:

Please describe the conduct or incident(s) that is basis of this report, including who engaged in the prohibited conduct, including sexual harassment. It is also helpful to identify who you are making this report about, when the dates this conduct occurred, any witnesses and any other information you believe is important.

I request that this report of prohibited conduct be investigated under Procedures for Resolution of Reports against Employees under Cornell University Policy 6.4.

Signed:

Dated:

¹ Including those individuals listed as Discrimination and Harassment Advisors on the Cornell HR website: [here](#)

² Please call 607.255.6866 or e-mail: equalopportunity@cornell.edu