



SEXUAL MISCONDUCT POLICY

OVERVIEW

Cedar Crest College is committed to ensuring that all members of the college community have a learning and working environment that is free from sexual misconduct. Sexual misconduct includes sexual harassment, sexual assault, sexual exploitation, intimate partner violence and stalking that is sex or gender based. Cedar Crest College considers all forms of sexual misconduct to be serious offenses that are not tolerated within the College or any community. Cedar Crest College expects all members of the College community to share in the responsibility for ensuring that the Cedar Crest College environment is free from any form of abuse, violence or verbal or physical intimidation.

Cedar Crest College promotes and encourages prompt reporting and resolution of all sexual misconduct reports. Allegations of sexual misconduct may be reported anonymously, unless the individual reporting is a mandated reporter. Retaliation in any form (e.g., intimidation, threats or harassment) against anyone who makes a complaint of sexual misconduct in good faith, or any third party cooperating with the investigation of such an act is strictly prohibited by law and Cedar Crest College policy and may result in disciplinary action.

Survivors are encouraged to seek medical attention and utilize support resources available on campus and through local and national agencies. Assistance is available twenty-four hours a day as outlined in the “Services, Education, and Prevention Programs” section below.

Cedar Crest College does not discriminate on the basis of race, color, religion, gender, gender identity, gender expression, sex, national origin, age, disability, sexual orientation, family status or any other characteristics protected from discrimination under law or Cedar Crest College policy.

If you have any questions regarding this Policy or Title IX generally, you may contact Cedar Crest College’s Title IX Coordinator, Lisa Garbacik, by phone at 610-606- 4666 ext. 3584, in person at Blaney 104 or by e-mail at titleix@cedarcrest.edu .

POLICY

It is the policy of Cedar Crest College that any act(s) of sexual misconduct violate(s) the standards of conduct required of members of the college community. As such, sexual misconduct is prohibited without exception.

DEFINITIONS

The law provides for various violent and/or non-consensual sexual acts that constitute criminal acts. Commission of any act deemed a crime by state or federal law is a violation of the College’s policies. Additionally, the College has defined categories of sexual misconduct, as stated below, for which action under this policy will be imposed. To fall within the jurisdiction of Title IX, and this policy, the alleged Title IX prohibited conduct must have taken place in a College program or activity, and against a person in the United States at the time the conduct occurred. A College program or activity includes locations, events, or circumstances over which the College exercises substantial control over both the respondent and the context in which the Title IX prohibited conduct occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the College. Both study-abroad programs and off-campus locations that are not within a College program or activity and are not covered by the Title IX regulations.

CONSENT

Consent is knowing, voluntary and expressed permission to engage in mutually agreed upon sexual activity. Consent can be given by words or actions as long as they establish mutually understandable clear permission regarding the willingness to engage (and the conditions of) sexual activity. Since individuals may experience the same interaction in different ways, it is the responsibility of each party to make certain that the other has consented before engaging in the activity. Consent is active, not passive, and can never be assumed.

A person cannot consent if the person is unable to understand what is happening or is disoriented, helpless, asleep or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has acted without consent. It is not an excuse that the individual responding party was intoxicated and, therefore, did not realize the incapacity of the other party.

Incapacitation is defined as a state where someone cannot make rational, reasonable decisions because they lack capacity to give knowing consent (e.g., to understand the “who, what, when, where, why or how” of the sexual interaction). Incapacitation may result from physical or mental conditions, including mental disability, sleep, involuntary physical restraint, from the consumption of alcohol and/or other drugs and may, but not always, manifest as unconsciousness or a state of blackout.

Consent cannot be given by an individual who has been coerced, including being compelled by force, threat of force, or deception. Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Coercion is unreasonable pressure for sexual activity.

Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). Previous relationships or prior consent to a sexual act does not imply consent to future sexual acts, including “blanket” consent (i.e. permission in advance for any/all actions at a later time/place).

The existence of consent is based on the totality of the circumstances, including the context in which the alleged incident occurred and any similar previous patterns. Silence or the absence of resistance alone is not consent. A person can withdraw consent at any time during sexual activity by expressing in words or actions that the act should no longer continue and, if that happens, the other person must stop immediately.

Sexual contact by an adult with a person who is of an age that they cannot legally consent to sexual activity in the State of Pennsylvania will be considered a violation of this policy. According to Pennsylvania law, a person under the age of 13 years cannot consent to sexual activity. Individuals between the ages of 13 and 15 can only consent to sexual activity with a person within a four-year age range.

SEXUAL HARASSMENT

Sexual Harassment is form of sexual misconduct which is prohibited under Title VII in employment and under Title IX in education. Sexual harassment is unwelcome, sexual or gender-based verbal, written, visual, online and/or physical conduct and can occur in two forms: quid pro quo (power differential) and hostile environment.

Quid pro quo sexual harassment exists when there are unwelcome sexual advances, requests for sexual favors, and other verbal, written, visual, online and/or physical conduct of a sexual nature AND when submission to such conduct is made, explicitly or implicitly, a term or condition of a community member’s employment, education, or other participation in the community OR when submission or rejection of such conduct is used as the basis for decisions affecting employment, education or other participation in the community.

Hostile Environment sexual harassment exists with unwelcome sexual or gender-based verbal, written, visual, online and/or physical conduct is sufficiently severe and pervasive and objectively offensive that it has the

effect of unreasonably interfering with, denying or limiting employment opportunities or the ability to participate in or benefit from the College's educational, social and/or residential programs and activities.

It is not possible to list all circumstances that may constitute sexual harassment, however, the following are examples of conduct that, if unwelcome, may constitute harassment, depending on the totality of the circumstances

- Unwelcome sexual advances or propositions (regardless of whether they involve physical touching)
- Explicitly or implicitly conditioning any terms of employment or education (e.g. continued employment, wages, evaluation, advancement, assignments, grades, participation in events) on provisions of sexual favors)
- Inquiries into another's sexual experience, discussions of one's sexual activities, comments on an individual's body or about an individual's sexual activity, deficiencies or prowess
- Sexual innuendo, sexually suggestive comments or use of sexually explicit or vulgar language
- Sexually oriented teasing or practical jokes or humor about gender specific traits
- Suggestive body language or gestures
- Display or transmission of sexually suggestive objects, pictures, posters, illustrations, or other printed or visual material
- Leering, whistling, or physical contact such as unwelcome touching, patting, pinching, or brushing against another's body
- Continued requests to socialize, on or off duty, on or off campus, when a community member has indicated rejection or lack of interest
- Continued writing/sending of sexually suggestive messages when it is known or should be known to be unwelcome
- Derogatory or provocative remarks relating to an employee's sex, sexual orientation, gender, or gender identity

The College prohibits relationships, whether consensual or nonconsensual, between individuals where there is a power differential and the possibility of favoritism or abuse exists or where one of the individuals is in a position to make decisions that may affect the career or academic experience of the other. Should such a relationship develop, the individuals involved are required to disclose the relationship to the Title IX Coordinator so that any real or perceived inequities, favoritism or other such power differential can be addressed and minimized or eliminated.

SEXUAL ASSAULT

Sexual assault is a form of sexual violence and includes non-consensual sexual contact and non-consensual sexual penetration.

Non-consensual sexual contact is any intentional sexual touching, however slight, with any body part or object, by any individual upon another, that is without consent and/or by force, including physical violence, threats, intimidation or coercion. Sexual contact includes any intentional contact with the breasts, groin, genitals or buttocks or making another touch you with or on any of these body parts. Sexual contact also includes any other bodily contact in a sexual manner.

Non-consensual sexual penetration is any sexual penetration however slight, with any body part or object, by any individual upon another, that is without consent and/or by force, including physical violence, threats, intimidation or coercion. Sexual penetration includes vaginal or anal penetration by a penis, tongue, finger or object, or oral copulation by mouth to genital contact or genital to mouth contact, no matter how slight the penetration or contact.

SEXUAL EXPLOITATION

Sexual Exploitation occurs when a person takes non-consensual or abusive sexual advantage of another in a way that does not constitute one of the other sexual violence definitions in this policy. Examples of sexual exploitation include, but are not limited to:

- Exposing one's genitals in non-consensual circumstances or inducing another to expose their genitals
- Engaging in sexual voyeurism such as watching a person undressing, using the bathroom, or engaged in sexual acts without the consent of the person being observed.
- Permitting others to observe you engaging in an act of consensual sex without the consent of all involved parties
- Taking pictures or video or audio recordings of a sexual nature without the consent of all involved
- Disseminating pictures, video, or audio recordings of a sexual nature without the consent of all involved parties
- Knowingly exposing another to pornography without their consent
- Possession, use, and/or distribution of alcohol or other drugs for the purpose of engaging in or facilitating any act of sexual violence
- Knowingly engaging in sexual activity with another while knowingly infected with a sexually transmitted infection (STI) without informing the other person in advance of the sexual activity
- Prostituting another individual

INTIMATE PARTNER VIOLENCE

Intimate partner violence is any instance of violence or abuse (verbal, physical or psychological) that occurs between those who are in or have been in an intimate relationship with each other. Intimate partner violence includes dating violence and domestic violence. To categorize an incident as domestic violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

STALKING

Stalking is repetitive acts and/or communications targeted at an individual that would cause a reasonable person to fear for their safety or the safety of others, or to experience substantial emotional distress. Stalking may include, but is not limited to, repeatedly following, harassing, threatening, or intimidating another by phone, mail, electronic communication, or any other action, device or method. Stalking that is gender-based is included in the protections in this policy.

REPORTING OPTIONS and RESPONSIBILITIES

Any individual who has information about an alleged violation of this policy is encouraged to report that information to any or all of the resources listed in this section. Any person may report Title IX prohibited conduct, whether or not the individual reporting is the person alleged to have experienced the conduct. Individuals are encouraged to make a report soon after the incident in question in order to maximize the College's ability to investigate and reach a finding. Offenses to be reported include those allegedly committed by students, faculty, staff, other members of the College community, or non-members. Individuals of any gender identity may report sex or gender-based offenses.

Reporting, for the purpose of this policy, is simply the act of disclosing information to someone. Reporting is the first step in accessing resources and support services and exploring the various options for resolution described in this policy. All reports will be met with the highest possible degree of respect and privacy for all involved parties.

Depending on how a report is made, the person or office receiving the report may have an obligation to inform the Title IX Coordinator, whose purpose is to conduct an initial assessment of the report and to ensure the well-being of the survivor and the campus community. Reporting parties will, as much as possible, retain the

right to determine if and when certain resolution options are implemented. If on the face of the initial report, the Title IX Coordinator determines that the conduct alleged does not fall within the scope of Title IX, the Title IX Coordinator may also inform the Complainant that the matter may be referred to another College process. Supportive measures, however, will be offered regardless of whether the matter is investigated.

Reports, including anonymous reports, can be made directly to the Title IX Coordinator online at any time using the Title IX Reporting Form. If known, reports should include as much detail as possible about the date, time, location, and nature of the incident or behavior. Under the Clery Act, the Title IX Coordinator is considered a Campus Security Authority (CSA) and has an obligation to report statistical information about sexual assault, intimate partner violence, and stalking to campus law enforcement for inclusion in the daily crime log and Annual Security Report for the safety of our campus community. When the reported incident constitutes a serious or ongoing threat to the campus community, campus law enforcement may be required to issue a Timely Warning Notice warning of potential danger. No personally identifiable information is reported or utilized for these purposes.

In addition to the anonymous online reporting form, reports may also be made directly to the Title IX Coordinator in person, by phone, or by email:

Lisa Garbacik

Blaney Hall, Room 104

610-606-4666 x 3584

titleIX@cedarcrest.edu

https://cm.maxient.com/reportingform.php?CedarCrestCollege&layout_id=7

The Title IX Coordinator will ask for the following information, if known: Name of Complainant; Complainant's role, if any, within the College (student, faculty, staff, alumni, other); Name of Respondent; Respondent's role within the College (student, faculty, staff, other); Date of the incident; Location of the incident; Time of the incident; Nature of the conduct; Date of previous report (if any); To whom any previous report was made (if any).

Title IX personnel shall be free from bias or conflict.

CONFIDENTIAL RESOURCES

Confidential resources are able to receive disclosures without an obligation to tell anyone. Only one specific group of campus professionals are licensed as confidential resources.

Confidential campus resources include:

Health and Counseling Services (610)606-4640

Additional confidential local, state, and national resources can be found on the College's Title IX Support Resources web site.

RESPONSIBLE EMPLOYEES

All faculty and staff at the College, including resident advisors, coaches, and campus police officers are considered responsible employees with an obligation to report disclosures of sexual violence, including sexual harassment and sex or gender-based discrimination to the Title IX Coordinator. Responsible employees can report in person, by email, or by using the Title IX Reporting Form and may face disciplinary consequences for failing to report. Responsible employees who personally experience sexual violence or discrimination are not obligated to report these experiences, but are encouraged to do so in order to permit the College to conduct an investigation into such issues.

OFFICIALS WITH AUTHORITY (OWAs)

Officials with Authority (OWA's) are those individuals on campus who have the authority to institute corrective measures. This includes the Title IX Coordinator, Deputy Title IX Coordinators, Dean of Students,

Provost, President, Chief Financial Officer/Chief Operating Officer, Director of Residence Life, Dean of Student Success, Chief of Campus Police and the Director of Athletics, Recreation and Wellness. A report made to any such individual constitutes actual knowledge of any such allegations.

FAMILY AND EMERGENCY NOTIFICATION

Reporting parties are strongly encouraged to share information with their families so that they may provide support and comfort during this process. This policy stops short of requiring parental notification when students are 18 years of age or older in order to create a more supportive environment for reporting offenses of this nature. If an individual is so seriously injured that they are physically unable to make this decision, an administrator may contact a parent, guardian and/or emergency contact person.

AMNESTY

Cedar Crest College strongly encourages a culture of reporting sexual violence. The College recognizes that students who have been drinking and/or using drugs surrounding an incident of sexual violence may be hesitant to report due to fear of potential consequences for their own conduct. Therefore, reporting parties and witnesses acting in good faith are offered amnesty and will not be subject to sanctioning under the College's code of conduct for alcohol and/or drug use revealed in the reporting or investigative processes. Amnesty for other minor policy violations may be granted at the discretion of applicable leadership, such as in Student Affairs.

RETALIATION

It is a violation of policy to retaliate against any person making a complaint of sexual misconduct or against any person cooperating in the investigation of an allegation of sexual misconduct. For this policy, retaliation includes intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege provided by Title IX or because the individual has made a report or complaint, testified, assisted or participated or refused to participate in any manner in an investigation, proceeding or hearing. Incidents of retaliation should be reported immediately to the Title IX Coordinator and may result in disciplinary action outside of and independent of any sanction or interim measures imposed in response to the original allegation. Charging an individual with a disciplinary violation for making a materially false statement in bad faith in the course of an investigation does not constitute retaliation.

A determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

FALSE ALLEGATIONS or INFORMATION

It is a violation of this policy to make intentionally or deliberately false allegations, in addition to providing deliberately false, distorted, or misrepresented information in the Title IX process. False allegations may result in disciplinary action outside of and independent of any sanction or interim measures imposed in response to the original allegation.

RIGHTS OF REPORTING PARTY (Complainant) AND RESPONDING PARTY (Respondent)

The rights outlined in this policy apply equitably to parties involved in a campus Title IX process. The responding party (or respondent) is the individual alleged to have violated the Sexual Misconduct Policy. The reporting party (or complainant) is the individual directly impacted by the responding party's alleged violation. When an alleged violation of this policy is reported to the Title IX Coordinator, an initial assessment will be conducted by the Coordinator or a designee to determine jurisdiction, potential threats, emergency removal, timely warnings, and to assess the reporting party's willingness to participate in the process. This typically includes a conversation with the reporting party to gather information and ensure they are aware of support resources and measures and resolution options.

RIGHTS OF THE REPORTING PARTY (Complainant)

- To access campus and local support services, including medical attention
- To have every effort made to provide privacy and confidentiality throughout the process to the extent possible.

- To have every effort made to provide freedom from intimidation or harassment.
- To request a change of academic or living situation, transportation or working situations, while proceedings take place.
- To make up any academic work missed as a result of participation in the Title IX process.
- To request a "no contact" notice with the other individual(s) involved while proceedings take place.
- To remain present during any conduct proceedings where information is being presented.
- To have an advisor of choice present for investigative and disciplinary proceedings and who may participate in cross examination during the hearing process. A party may not directly cross-examine another party.
- To have an advisor ask questions of the reporting party and any witnesses during the investigative process.
- To be protected against evidence of past sexual history (not involving claims of assault) during the process except to the extent permitted by College conduct process or by law.
- To be informed in writing of the outcome of the hearing.
- To request an appeal of the outcome and to be notified of any changes to the final outcome as a result of the appeal.
- The right to request a reasonable accommodation due to a disability during the complaint, investigative, hearing, or appeal process. Such requests will be reviewed in accordance with College policies and procedures.

RIGHTS of RESPONDING PARTY (Respondent)

- To access campus and local support services, including medical attention
- To have every effort made to provide privacy and confidentiality throughout the process to the extent possible.
- To have every effort made to provide freedom from intimidation or harassment.
- To request a change of academic or living situation, transportation or working situations, while proceedings take place.
- To make up any academic work missed as a result of participation in the Title IX process.
- To request a "no contact" notice with the other individual(s) involved while proceedings take place.
- To remain present during any conduct proceedings where information is being presented.
- To have an advisor of choice present for investigative and disciplinary proceedings and who may participate in cross examination during the hearing process. A party may not directly cross-examine another party.
- To have an advisor ask questions of the reporting party and any witnesses during the investigative process.
- To be protected against evidence of past sexual history (not involving claims of assault) during the process except to the extent permitted by College conduct process or by law.
- To be informed in writing of the outcome of the hearing.
- To request an appeal of the outcome and to be notified of any changes to the final outcome as a result of the appeal.
- The right to request a reasonable accommodation due to a disability during the complaint, investigative, hearing, or appeal process. Such requests will be reviewed in accordance with College policies and procedures.

SUPPORTIVE MEASURES

Supportive measures are designed to restore or preserve equal access to College programs or activities without unreasonably burdening the other party, including measures designed to protect the safety of all parties, the educational and working environment and to deter sexual harassment. Supportive measures are designed to be non-disciplinary, non-punitive individualized services as appropriate and are reasonably available to the reporting party and the responding party whether or not a formal complaint is filed.

The Title IX Coordinator or designee works with the reporting party to arrange appropriate measures to ensure the safety and well-being of the members of the College community and to preserve the safety of College

property, to ensure the reporting party's own physical or emotional safety and well-being, to ensure normal operation of the College if the responding party poses a threat of disruption, and to preserve the integrity of the Title IX process. Supportive measures are available with or without filing a formal complaint and can be requested, considered, and implemented at any point.

The Title IX Coordinator will maintain privacy to the degree possible while working with other campus resources to provide these measures. The specific measures that may be implemented will vary based on the circumstances of the situation, but may include:

- Referral to counseling, medical and/or other health services
- Referral to Employee Assistance Program (EAP)
- Safety resources or planning
- Academic support, extensions of deadlines or other related adjustments
- Change in work or class schedule
- Change of supervisor
- Consideration of leave or withdrawal requests
- Timely Warnings
- No Contact limitations or orders

In addition to No Contact notices, interim actions such as holds on transcripts, degrees, or references, and/or suspension from classes, employment or campus facilities, may be applied to the responding party to protect the campus community pending the outcome of an investigation.

Any measures put in place will be regularly re-evaluated to determine the necessity of their continued implementation. Parties may specifically request an interim action be amended or removed at any time by submitting a written request to the Title IX Coordinator, whose decision in the matter will be final.

CONFIDENTIALITY

If the reporting party does not wish to pursue a formal process and/or requests that the complaint remain confidential, the College will attempt to honor this request. In such cases, the College may still take steps to limit the effects of the alleged behavior and prevent its recurrence. The reporting party will be informed, however, that the College's ability to take action may be limited. The reporting party will also be informed that an investigation can be requested in the future but that information may be more difficult to acquire as times pass.

There are circumstances under which the College will not be able to fully honor the request of the reporting party. Factors impacting this decision include past reports or records of similar behavior by the responding party, a determination that there is a perceived threat of harm to the community or any of its members, or legal requirements the College must follow. A reporting party will be informed if a decision is made to proceed with an investigation that may compromise the confidentiality of their identity or go against their preferences for resolution.

CRIMINAL INVESTIGATION

The reporting party may choose to pursue a criminal investigation through local law enforcement before, after, concurrently, or independently of the other resolution options described in this policy. Cedar Crest College Campus Police can be contacted at 610-437-4471 or by dialing "0" from any campus phone to assist in facilitating this process. It should be noted that when a reporting party initiates both the criminal and internal processes, it may impact the timing of College internal processes to allow for concurrent law enforcement activity. The College will typically not wait for the criminal process to fully resolve.

INITIAL ASSESSMENT

Upon receipt of a complaint of sexual misconduct, the Title IX Coordinator or designee will conduct a brief initial assessment to determine:

- jurisdiction,
- health or safety threats

- emergency removal,
- if the behavior meets the definition of sexual harassment, sexual assault, intimate partner violence or stalking,
- if the behavior occurred within the College's programs or activities,
- the reporting party's willingness to participate
- other critical issues

The initial assessment will determine if a formal investigation will be initiated. If the report is determined to fall outside the jurisdiction of this policy, the complaint may be referred to other policies or processes.

In addition, when the College does not have jurisdiction over the responding party, the Title IX Coordinator may be able to assist by connecting the reporting party with additional resolution options that, depending on the situation, may include either a Title IX process at the responding party's institution (K-12 or college) or human resources process at the responding party's place of employment, if applicable.

When the College has jurisdiction over the responding party, administrative action may be taken directly through the College to resolve the complaint.

FORMAL INVESTIGATION

A formal complaint must be signed by a Complainant or the Title IX Coordinator to start the investigative process. The College will send written notice to both parties (complainant and respondent) upon receipt of a formal complaint. When a formal investigation is initiated, the College aims to resolve investigations in a thorough, equitable and timely manner, typically within a semester, unless good cause exists to extend this timeline. This includes, but is not limited to the absence of parties and/or witnesses or accommodations for language assistance, disabilities, or health conditions. Incidents of sexual misconduct are typically investigated by the Title IX office and then forwarded for resolution to either Student Affairs (for responding parties that are students) or Human Resources (for responding parties that are employees). Regardless of which process is used, the rights of the parties outlined in this policy will apply.

Upon initiation of a formal investigation, the Title IX Coordinator will assign an investigator(s) who will contact the reporting party for an interview to initiate the investigation. The Title IX Coordinator will provide written notice to reporting and responding parties to allow for them to prepare for an interview and identify an advisor. Notification of Allegations and Interview will include:

- the identity of the parties involved
- the sections of the policy alleged to have been violated
- the misconduct being alleged and that is considered sexual harassment, discrimination or retaliation
- the date and location of the alleged incident(s),
- the responding party is presumed to be "not responsible" for the alleged conduct until a determination is made according to the appeal/grievance process
- the parties may have an advisor of their choice who may be an attorney
- and a reminder of the expectation of truthfulness in the process
- a summary of the procedures and possible outcomes as outlined in this policy
- the date, time, location and participants of any investigative interview or meeting.

The investigator(s) will meet separately with the reporting and responding parties, as well as any relevant witnesses identified by either party or otherwise determined by the College to have information pertinent to the investigation. As part of the interview process, the reporting and responding parties will have the ability to provide any relevant evidence to the investigators. At the conclusion of each interview, the parties will have an opportunity to inspect and review the evidence obtained during the investigation that is directly related to the allegations and to review their statements for accuracy, as well as to propose questions to be asked of each other and any witnesses.

Following this process, a written report that summarizes the investigation (including summaries of all interviews and relevant evidence collected during the investigation) will be shared with the reporting and responding parties, who will have the opportunity to review and respond in writing (typically ten calendar days) to any perceived factual errors or omissions and to disclose any information that was not previously known or available. The Title IX Coordinator or designee will determine if any additional investigation needs to be done and this process will repeat as necessary.

Should it become clear, at any point during the investigation, that sufficient evidence does not exist to allege a potential violation of policy, the Title IX Coordinator or designee may end the process and inform the parties of the decision. It should be noted that insufficient evidence is not the same as a false claim and can result from a number of factors, including but not limited to the inability to obtain, corroborate, or verify evidence. Additionally, should a good-faith counterclaim (e.g. allegation by the responding party against the reporting party for the same or different behavior) be initiated, the Title IX Coordinator reserves the right to determine how the counterclaim is investigated. This may mean that the counterclaim is investigated after the resolution of the original allegation or concurrently, through the same investigation. Counterclaims not made in good faith may be considered retaliation under this policy.

HEARING PROCESS

Once the investigation is deemed complete, the Title IX Coordinator or designee will forward the investigative report to the appropriate decision-making body (based on status of responding party) in preparation for a “live” hearing (in person or through the use of technology) at least ten (10) days prior to the hearing, unless all parties agree to waive this provision. All parties will be provided with notice of the date, time, location, participants, procedures, possible sanctions and purpose of the hearing, after the conclusion of the investigation, unless such time period would need to be extended due to reasonable cause for delay. At the request of either party, the recipient must provide for the entire live hearing (including cross-examination) to occur with the parties located in separate rooms with technology enabling the parties to see and hear each other. Hearings will be transcribed or recorded through audio or audiovisual means, and the College will make the transcript or recording available to the parties for inspection and review upon request.

Advisors: At the hearing, each party may have an advisor who presents questions to be asked of the other party and any witnesses relevant as well as follow up questions (cross examination). Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party’s advisor of choice and never by a party personally. This is the only part of the hearing that an advisor may actively participate. If a party does not have an advisor, the College will provide one, at no cost, to ask question on the party’s behalf. The decision making body will determine the relevance of questions and if they should be excluded. If a party or witness chooses not to submit to questioning/cross examination, the decision maker may rely on any prior statement made by that party or witness in determining responsibility. Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker must first determine whether the question is relevant and explain to the party’s advisor asking cross-examination questions any decision to exclude a question as not relevant.

Standard of Proof: The “preponderance of evidence” standard, whether the conduct “more likely than not” occurred, will be used in making determinations of responsibility.

Determination: The decision maker will provide a written determination of responsibility to the parties at the same time, including specific information about the rationale supporting the decision(s). The written documentation will include: the section of the policy that was violated, a description of the procedural steps used, finding of fact that support the determination, conclusions, a statement of and rationale for, the determination and disciplinary sanctions imposed and the procedures for appeal.

APPEALS:

Parties may appeal a determination on the following basis:

- a procedural error that impacted the outcome
- new evidence that was not reasonably available at the time of the determination was made that could impact the outcome
- a conflict of interest or bias for or against the reporting or responding party that affected the outcome.

Appeals must be submitted in writing to the Title IX Coordinator within 10 calendar days of the determination, with extensions permitted for reasonable cause. Each party will be provided with written notification of the appeal and will have five calendar days to submit a written statement in support of or challenging the outcome. Student appeals will be reviewed and evaluated by the Dean of Students and employee appeals will be heard by the Chief Financial Officer/Chief Operating Officer. Appeals decision-makers may remand the matter back to investigator or hearing decision maker for reconsideration. A written decision of the outcome of the appeal will be provided to the parties at the same time, with the rationale for the determination.

When violations of other College policies allegedly occurred in conjunction with sexual misconduct violations, the procedures in this policy may be used to address those behaviors as well.

The College's investigation, hearing and resolution process are private proceedings. All persons present at any time during the process are expected to maintain privacy in accordance with this policy. While there is an expectation of privacy around what is disclosed in interviews, written in the investigative report, and decided in the resolution process, the parties do have discretion to share their own experiences with others should they choose to do so.

SANCTIONS and REMEDIES

If a responding party (respondent) has been found responsible for violating this policy, an appropriate set of outcomes will be determined. Sanctions or remedies will only be implemented when the appeals time frame has expired or the process has completed, unless there is ongoing risk or threat to the campus community. The following factors may be considered when determining outcomes:

- The nature, severity, and circumstances surrounding the violation
- The respondent's disciplinary history
- The need to bring an end to the reported behavior
- The need to prevent the future recurrence of the reported behavior
- The need to remedy the effects of the reported behavior on the reporting party and the college community

For student respondents, guidelines have been created to indicate when violations are likely to result in suspension or expulsion from the College. Students who are not dismissed from the College will receive developmental and/or restrictive sanctions intended to respond to the needs of the parties and the situation. Students who are suspended may also be given additional sanctions that must be completed prior to and/or after their return to the College.

For College employees (faculty and staff), disciplinary action and processes are outlined in the applicable handbook, faculty or staff.

Supportive measures that were implemented earlier in the process may be revised and/or extended at this stage of the process. Based on the outcome, additional measures may be implemented at the discretion of the Title IX Coordinator. Examples of additional remedies or measures are:

- Training and education on issues related to sexual misconduct
- Increased security measures in designated areas
- Updates to policy or procedures

INFORMAL RESOLUTION

In some situations, parties may agree to resolve a report informally rather than through the formal investigation and resolution process described above. Informal resolution may include mediation, restorative practices, or other measures that result in mutually agreed upon outcomes, including but not limited to those items listed as interim measures above. Informal resolution may be pursued at any point in the process prior to a determination of responsibility being made.

Informal resolution is available provided:

- a formal complaint has been filed
- the parties voluntarily agree in writing to participate

In the informal resolution process, each party will be provided with written notice of:

- the reported misconduct/allegations
- the requirements of the informal resolution process
- the rights of parties to withdraw from the process
- the consequences resulting from participating in the process, including possible sanctions and record retention
- whether the resolution is binding.

Informal resolution may be applicable where the responding party accepts responsibility and sanctions early, withdraws or resigns, or it is determined that a remedies only response is equitable to the parties.

Informal resolution may not be used to resolve allegations where an employee (faculty or staff) sexually harassed a student.

Decisions about the process or which resolutions may be most appropriate will be made in consultation with the Title IX Coordinator.

ENFORCEMENT OF TITLE IX

Any concerns regarding the application of Title IX law should be directed to:

U.S. Department of Education
Office for Civil Rights
100 Penn Square East, Suite 515
Philadelphia, PA 19107-3323
(215) 656-8541
OCR.Philadelphia@ed.gov