

# Oberlin College

## Formal Resolution Process

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Disciplinary action by the College against a Responding Party may only be taken through Formal Resolution Process (FRP) which is designed to provide fundamental fairness and respect for all parties by ensuring adequate notice, an equitable opportunity to be heard, and an equitable opportunity to respond to a report under this policy.

The FRP applies to complaints of violations of the Title IX Sexual Misconduct Policy, the Nondiscrimination and Harassment Policy, and the Prohibited Relationships Policy and consists of three phases – the investigation, the hearing and the appeals. Participants with documented disabilities have the right to request accommodations necessary to be able to fully participate in the FRP.

In general the College will attempt to complete the entire FRP within ninety (90) business days. Throughout the FRP, participants will receive timely notice of any meeting at which their attendance may be requested or required. The time frames outlined in the FRP may be extended for good cause by the Title IX/Equity Coordinator to ensure the integrity and completeness of the investigation, to accommodate the availability of witnesses, to address College breaks or vacations, or other legitimate reasons. Any extension of the time frames, and the reason for the extension, will be shared with the parties in writing. Participants in this process will receive written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time to prepare to participate. The College will attempt to accommodate the schedules of parties and witnesses, however, grievance resolution must be completed in a reasonably prompt time frame, and must proceed to conclusion even in the absence of a party or witness.

These procedures are entirely administrative in nature and are not considered legal proceedings. No participant may audio or video record the proceedings. All advisors must comply with the expectations for advisors or risk being excused from participation or attendance.

The Hearing Coordinator will record the Hearing only. If parties request a record of the Hearing, a transcript of the Hearing will be provided with appropriate redactions to protect the FERPA rights of other students involved. A transcription fee or copying fee may be assessed. Either party

is permitted to access to all records and recordings maintained by the Office of Equity, Diversity and Inclusion in the office.

Any individual designated by the College as a Title IX Coordinator, investigator, decision-maker, or any person designated by a College to facilitate an informal resolution process, must not have a conflict of interest or bias for or against Reporting Parties or Responding Parties generally or an individual Reporting Party or Responding Party. The following will not be considered evidence of bias:

- The Title IX Coordinator's initiation of a formal complaint, or; an individual's decision that allegations warrant an investigation.
- An individual's current job title, professional qualifications, past experience, gender identity, or sex will not alone indicate bias.
- Use of trauma-informed or practices will not be considered evidence of bias when such practices do not: rely on sex stereotypes; apply generalizations to allegations in specific cases; cause loss of impartiality, or prejudice of the facts at issue.

### I. INVESTIGATION

The OEDI Director/Title IX Coordinator in consultation with the Title IX/Equity Team, will oversee a prompt, thorough, and impartial investigation. Investigations are ordinarily conducted by an independent law firm specializing in higher education and Title IX/Equity compliance. Investigators are assigned after it is confirmed that they do not have a conflict of interest with any of the parties that would prevent them from being impartial.

Upon receipt of a formal complaint, the OEDI Director/Title IX Coordinator will provide to all known parties written notice of:

- a. the appropriate grievance process;
- b. the reported misconduct, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview;
- c. the College's position that the Responding Party is presumed not responsible for the alleged conduct and

that a determination regarding responsibility is made at the conclusion of the grievance process;

- d. the parties right to have an advisor of their choice, who may be an attorney;
- e. the parties right to inspect and review evidence; and
- f. the College's prohibition on knowingly making false statements or knowingly submitting false information during the grievance process.

The Investigator will conduct a fact-finding investigation that includes meeting separately with the Reporting Party, Responding Party, and pertinent witnesses; and reviewing and analyzing other relevant information. The College will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege. Information gathered during the investigation will be used to evaluate whether a policy violation has occurred. All individuals involved in the investigation, including the Reporting Party, the Responding Party, and any third-party witnesses, will be treated with respect. The investigator will manage the investigation professionally by complying with best practices for managing sensitive information privately.

If, in the course of an investigation, the College decides to investigate allegations about the Reporting Party or Responding Party that are not included in the initial notice, the College will provide notice of the additional allegations to the parties whose identities are known.

The College will not access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the College obtains that party's voluntary, written consent. Additionally, the College will not consider or provide for inspection and review evidence which the College knows was illegally or unlawfully created or obtained.

Upon receipt of a complaint, the Investigator will strive to complete the investigation and submit to the parties a draft investigation report within 30 business days. Upon receipt of the draft report, the parties will have ten (10) business days to review and respond to the investigator with any comments. The investigator will submit a final investigation report to the Title IX/Equity Coordinator within five (5) business days of receiving the parties' comments unless further investigation is required. The final investigation report will be made available

to the parties at least ten (10) days before the date of the hearing.

## II. HEARING

All hearings are managed by a Hearing Coordinator who will be appointed by the OEDI Director/Title IX Coordinator. The Hearing Coordinator organizes the process, in collaboration with the OEDI Director/Title IX Coordinator, in compliance with the applicable policies and procedures. The Hearing Coordinator is also responsible for all communication with the parties related to the hearing after the investigation is completed. The Hearing Coordinator does not make determinations of responsibility or sanctions. The specific decision makers will vary based upon the role of the Responding Party and the Policy Violations being considered:

- For a *report against a student or staff member*, the report will be heard by a hearing panel comprised of three trained staff members.
- For a *report against a faculty member*, the report will be heard by a panel composed of three trained members of the General Faculty Professional Conduct Review Committee.

### A. Pre-Hearing Procedures

#### 1. Notice of Charges

Following receipt of the final investigation report, the Hearing Coordinator will send a Notice of Charge Letter to both the Reporting Party and the Responding Party. The Notice of Charge Letter provides each party with a brief summary of the conduct at issue, the specific policy violation(s) that are alleged to have taken place, and the expected schedule for resolving the complaint.

#### 2. Acceptance of Responsibility

If a Responding Party wishes to accept responsibility for the charges, the Responding Party will provide a written acceptance of the facts of the allegation. In this instance, The Hearing Coordinator will then convene a Hearing Panel whose role will be solely to determine appropriate corrective action(s). The investigative report and the impact statements submitted by the parties will serve as the primary evidence in determining the appropriate corrective action(s).

#### 3. Pre-Hearing Meeting with Reporting Party and Responding Party

Following the Notice of Charge Letter, the Hearing Coordinator will contact the Reporting Party and Responding Party to schedule separate meetings with each party. These meetings should occur no more than five days after the Notice of Charges Letter is sent.

At this pre-hearing meeting, each party will receive an explanation of the hearing process and have the opportunity to ask any questions. The Hearing Coordinator will also explain any information that the Parties may wish to prepare before the hearing including their opening statement, questions for the other party, witnesses, and investigator, and an impact statement. The impact statement is reviewed by the Hearing Panel only if the Responding Party is found to have violated policy and allows the Parties to share the impact the reported behavior has had on them and request specific Corrective Action(s). The Advisor is encouraged to accompany the Reporting Party or Responding Party to this initial meeting.

This meeting can be scheduled concurrently with the time frame during which the Responding Party may be deciding whether or not they wish to accept responsibility for the charges.

#### **4. Pre-Hearing Review of Documents.**

Both parties will be afforded similar and timely access to any documents and information used at a hearing. The Reporting Party and the Responding Party will each have the opportunity to review all investigative documents, subject to the privacy limitations imposed by state and federal law, at least ten (10) business before to the hearing. The investigative documents will include the investigation report, any witness statements or interviews, statements from or interviews with both parties, and any other documentary information that will be presented to the Hearing Panel.

The Hearing Panel must review all pertinent information regarding the incident in question prior to the date of the Hearing Panel.

New evidence and/or witnesses not provided as part of the investigation may not be introduced at the Hearing without permission of the Hearing Coordinator.

#### **5. Relevance**

The Hearing Coordinator will review the investigative report, any witness statements and any other documentary evidence to determine whether the proffered information contained therein is relevant and material to the determination of responsibility given the nature of the allegations pertaining to the specific matter before the Hearing Panel.

In general, the prior sexual history of the parties is not considered relevant to the case in accordance with Rape Shield laws unless such questions or evidence are offered to prove that someone other than the Responding Party

committed the alleged conduct, or if it concerns specific incidents of sexual behavior between the Reporting Party and Responding Party and is offered to prove consent.

#### **6. Witnesses**

The Reporting Party, Responding Party, and the Hearing Panel may request witness testimony. Witnesses must have relevant information to the conduct in question. In general, neither party will be permitted to call as a witness anyone who was not interviewed by the investigator as part of the College's investigation. If either party wishes to call witnesses, whether or not they were previously interviewed as part of the College's investigation, the following must be submitted to the Hearing Coordinator via e-mail:

- The names and contact information for each witness
- A brief written statement of the expected topics for testimony of that witness;
- A summary of why the witness' presence is relevant to making a decision about responsibility at the hearing; and,
- The reason why the witness was not interviewed by the investigator, if applicable.

The Hearing Coordinator will determine if any proffered witness has relevant information and if there is sufficient justification for permitting a witness who was not interviewed by the investigator. The Hearing Coordinator may also require the investigator to interview a newly proffered witness.

#### **7. Notice of Hearing**

Once each party has met with the Hearing Coordinator and a responding party has not accepted responsibility for the charges, a Notice of Hearing is sent to the Reporting Party and the Responding Party. The Notice of Hearing provides the parties with the date, time, and place of the hearing, as well as the names of the individual panelists on the Hearing Panel.

In general, the hearing will be scheduled within ten (10) business days of the date of the Notice of Hearing. The Hearing Coordinator will ensure that the hearing does not occur during scheduled classes for the parties. Outside of scheduled courses, the parties are expected to make themselves available for the hearing at the set time.

#### **8. Composition of the Hearing Panel**

All Hearing Panelists have received training to ensure that they understand the policy, definitions of prohibited conduct, scope of the policies, how to avoid prejudgment of the facts at issue, and how to recognize and avoid

conflicts of interest and bias. The OEDI Director/Title IX Coordinator and the Investigator assigned to the case will not serve as a hearing panelist and will not have a role in the determination. The Reporting Party and the Responding Party may each submit a written request to the Hearing Coordinator that a member of the Hearing Panel be removed. The request must clearly state the grounds to support a claim of bias, conflict of interest or an inability to be fair and impartial. This challenge must be raised within two business days of receipt of the Notice of Hearing. Hearing Panels comprised of members of the Professional Conduct Review Committee will be selected semi-randomly. In general, the OEDI Director/ Title IX Coordinator will attempt to comprise a faculty panel that includes at least one faculty member from the Conservatory and one from the College of Arts and Sciences. If there are insufficient eligible members of the General Faculty Professional Conduct Review Committee available, the OEDI Director/ Title IX Coordinator will identify appropriately trained faculty alternates to serve on the hearing panel.

### **9. Consolidation of Hearings**

At the discretion of the Hearing Coordinator, in consultation with the OEDI Director/Title IX Coordinator, multiple reports may be consolidated against more than one Responding Party, or by more than one Reporting Party against one or more Responding Parties, or by one party against the other party, where the reports of sexual harassment arise out of the same facts or circumstances. This means the reports are so intertwined that they directly relate to all parties. Matters may be consolidated where they involve multiple Reporting Parties, multiple Responding Parties, or related conduct that would regularly have been heard under other College Policies. If one or more of the charges falls within the scope of the Title IX Sexual Harassment Policy, those hearing procedures will be used to adjudicate all potential policy violations. If the reported conduct falls within the scope of the Nondiscrimination and Harassment Policy but not within the scope of the Title IX Sexual Harassment Policy, the procedures related to the Nondiscrimination and Harassment Policy will be used to adjudicate all potential policy violations.

### **10. Pre-Hearing Meeting with Hearing Panel**

Once the Hearing Panel has been selected and cleared of conflict of interest, the Panelists will receive all investigative materials for the hearing. The Hearing Coordinator will schedule a meeting with the Panelists and Title IX/Equity Coordinator to review the policy sections that are implicated by the Notice of Charges, and review the hearing procedures.

## **B. Hearing**

### **1. Attendance at Hearing**

If a party does not attend a hearing for any non-emergency or non-compelling reason, the hearing may be held in their absence at the discretion of the Hearing Coordinator. The College will not require a Reporting Party to participate in or attend a hearing, although the College's ability to present evidence may be limited in the instance that a Reporting Party chooses not to participate in the hearing. If a party does not attend a hearing under the Title IX Sexual Harassment Policy, an Advisor will be appointed to cross examine the other party and witnesses on their behalf. If a Responding Party who is a student withdraws from the College before the conclusion of an investigation or formal resolution under this policy, they may still participate in the remainder of the process, and an enrollment hold will be placed on their record to prevent re-enrollment at the College until such time that the case is resolved and all assigned corrective action(s) are completed.

If a Responding Party chooses not to participate, the College will move forward with the resolution of the report and imposition of sanction, if any, in absentia. If the report is finally resolved while the Responding Party is absent, the Responding Parties will be informed of the final outcome in accordance with regular practice under this policy.

A Reporting Party or Responding Party may also request alternative testimony options that would not require physical proximity to the other party such as conducting the hearing by video conference. The Hearing Coordinator and Panel will be trained on any technology being used to conduct a hearing prior to the hearing. Under the Title IX Sexual Harassment Policy, if a party or witness chooses not to attend a hearing or to respond to cross-examination, any statements they made as part of the investigative process will not be considered in the determination. Other objective information that was provided by the party will be considered.

Under the Nondiscrimination and Anti-Harassment Policy, a party may choose not to participate in a hearing or to respond to questions. It is important to note that doing so may limit the hearing panel's ability to assess the credibility of the party and the evidence provided.

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## 2. Participants in Hearing Procedures

The Hearing Panel is a closed hearing and is not open to the public. The individuals who may appear before the Hearing Panel are: the Reporting Party; the Responding Party; any individuals serving as an approved advisor; any individuals appearing as witnesses; and any relevant administrators necessary to facilitate the hearing.

## 3. Safeguarding of Privacy

All participants involved in a hearing are expected to respect the seriousness of the matter and the privacy of the individuals involved. The College expectation of privacy during the hearing process should not be understood to limit any legal rights of the parties during or after resolution. The College may not, by federal law, prohibit the Reporting Party from disclosing the final outcome of a formal process (after any appeals are concluded). All other conditions for disclosure of hearing records and outcomes are governed by FERPA, any other applicable privacy laws, and professional ethical standards.

## 4. Hearing Panel Protocol

The hearing is intended to provide a fair and ample opportunity for each party to present relevant information and witnesses. The Hearing Panel will make factual findings, determine whether College policy was violated, and recommend appropriate corrective action(s) and remedies, if appropriate. The hearing is not a civil or criminal proceeding and is not designed to be adversarial in nature. At the Hearing Coordinator's discretion, anyone disrupting the hearing may be removed.

It is the responsibility of the Hearing Panel to assure that the information necessary to make an informed decision is presented. The Panel members may play an active role in questioning both parties and witnesses involved in the case. At times, the Panel members may need to ask difficult or sensitive questions in order to understand areas of factual dispute or gain a full understanding of the context. All evidence subject to the parties' inspection and review will be available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

Parties and other individuals who offer information at a hearing are expected to respond honestly, and to the best of their knowledge.

The hearing will be called to order by the Hearing Coordinator. The Hearing Coordinator will explain the hearing process and will provide an opportunity to all parties to ask procedural questions before initial statements and the presentation of information.

All individuals present at the hearing will introduce themselves and their role in the hearing.

The investigator will provide a brief statement summarizing the investigation. The statement should focus on the areas of agreement and disagreement in order to assist the Hearing Panel in prioritizing areas of inquiry.

After this initial statement and introductions, the process of hearing from the parties and witnesses will begin. During this portion of the hearing, the panel and the parties may pose questions for the parties and witnesses as follows:

- If the hearing is conducted under the Title IX Sexual Harassment policy, those questions will be posed by the party's advisor.
- If the hearing is conducted under the Nondiscrimination and Anti-Harassment Policy, the hearing panel will ask questions submitted in writing to the Hearing Panel by the Parties.

In all cases, the Hearing Panel has the responsibility for determining the relevance and appropriateness of the questions to be asked and sharing the rationale for not asking any questions. In general, questions that will not be asked are those that are not relevant to the question at hand, those that are repetitive to questions already asked, and any questions protected by Rape Shield Laws. Questions should be framed in a manner to seek information. Abusive, bullying or unprofessional conduct is not permitted. The Hearing Coordinator will explain any decision to exclude a question as not relevant.

The Reporting Party has the option to supplement the information provided to the Panel with a brief opening statement (no more than 10 minutes in length). The Hearing Panel may pose questions to the Reporting Party after which questions from the responding party will be asked per the appropriate policy. The Responding Party will not be permitted to question the Reporting Party directly.

After the Reporting Party has finished, the Responding Party has the option to make a brief opening statement (no more than 10 minutes in length). The Hearing Panel may pose questions to the Responding Party after which questions from the Reporting Party will be asked per the appropriate policy. The Reporting Party will not be permitted to question the Responding Party directly.

The Panel may hear from witnesses on behalf of the Reporting Party and the Responding Party. Each witness will be questioned by the Hearing Panel, after

which questions from the Parties will be asked per the appropriate policy

The Hearing Panel, the Reporting Party, and Responding Party may then question the investigator per the process outlined in the appropriate policy. The investigator is not permitted to offer an opinion on the credibility of any individual or as to the ultimate issue.

At the conclusion of the presentation of all witnesses, the Reporting Party and Responding Party will have the option to address briefly any outstanding issues of fact with a brief closing statement (no more than 10 minutes in length).

## 5. Deliberation

After all of the information has been presented, all parties will be dismissed and the hearing will be formally concluded. The Hearing Panel reserves the right to recall any party or witness for further questions and to seek additional information necessary to make a decision.

The Hearing Panel will conduct their deliberations in private. The Panel must complete their deliberations within two business days. The Hearing Coordinator will remain for deliberations, but will not make any determination related to responsibility.

### *Preponderance of the Evidence Standard*

The Hearing Panel will determine a Responding Party's responsibility by a preponderance of the evidence. Under this standard, individuals are presumed not to have engaged in the conduct reported unless a preponderance of the evidence supports a finding that sexual misconduct occurred. This means that the Hearing Panel will decide whether it is "more likely than not," based upon all of the relevant information, that the Responding Party is responsible for the alleged violation(s). The Hearing Panel must reach a decision on responsibility by majority vote. The votes of individual Panel members will not be shared with the parties.

If the Panel finds the Responding Party responsible, the Panel will then recommend appropriate corrective action(s), taking into consideration any prior findings of responsibility and any submitted impact statements. The OEDI Director/Title IX Coordinator, will review the recommendations for fairness and consistency and the designated administrator will impose an appropriate sanction.

The findings of the Hearing Panel will be documented in writing by the Hearing Panel chair. The findings will

detail the findings of fact and the basis/rationale for the decision of the Hearing Panel, making reference to the evidence that led to the finding. This report will be submitted by the Hearing Panel chair to the Hearing Coordinator in writing.

## C. Outcome Letter

The outcome of the Hearing Panel will be communicated to the Reporting Party and Responding Party simultaneously and in writing, usually within five (5) business days from the date the hearing is concluded. The notification of each party should occur at or near the same time.

- The letter to each party will include:
- Identification of the allegations potentially constituting sexual harassment
- A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- Findings of fact supporting the determination;
- Conclusions regarding the application of the Policy to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the College imposes on the Responding Party, and whether remedies will be provided by the College to the Reporting Party, and;
- The College's procedures and permissible bases for the Reporting Party and Responding Party to appeal.

For reports involving sexual violence, the Reporting Party will be fully informed of any corrective action(s). For all other reports under this policy, the Reporting Party will be informed of only those corrective action(s) that directly relate to the Reporting Party, consistent with FERPA and other applicable law.

Corrective action(s) imposed will be implemented at the end of the appeals process or once the deadline for submitting an appeal has passed.

The College also reserves the right to designate which College officials have a need to know about individual conduct reports pursuant to FERPA requirements.

### III. APPEALS PROCESS

Either party may appeal the outcome or sanctions imposed. The appeal must be submitted within five (5) business days of receiving the Hearing Panel's or Hearing Officer's decision letter. To request an appeal, the party must submit a written appeal to the OEDI Director/Title IX Coordinator who will appoint a trained appeals officer. The decision-maker for the appeal will not be the same person as the decision-maker that reached the determination regarding responsibility or dismissal, the investigator, or the Title IX Coordinator. The appeal shall consist of a plain, concise and complete written statement outlining the grounds for appeal and all relevant information to substantiate the basis for the appeal. Appeals are limited to 3000 words. Dissatisfaction with the outcome of the hearing is not grounds for appeal.

**Grounds for Appeal.** A party may only seek appeal on the findings under the following grounds:

- a. A material deviation from the procedures affected the outcome of the case;
- b. There is new and relevant evidence that was not reasonably available when the determination of responsibility was made that could affect the outcome;
- c. There is a conflict of interest or bias on the part of the Title IX/Equity Coordinator, investigator or decision-maker. An individual's past education or professional experience alone is insufficient to establish a conflict of interest or bias; or
- d. The sanctions are not appropriate or disproportionate to the determined violation(s).

Both parties will be notified if either party submits an appeal and will be informed of the grounds of the appeal. A party may submit a short written response (no longer than 3000 words) to the other party's appeal within five (5) business days of this notification.

**Appeal Procedure.** In any request for an appeal, the burden of proof lies with the party requesting the appeal, as the original determination and sanction are presumed to have been decided reasonably and appropriately. If the Appeals Officer determines that the appeal does not properly fit within one

of the four grounds, the appeal will be denied. If the appeal does fit within the grounds, the Appeals Officer will review the record and the information submitted on appeal and issue a written report that may result in the following outcomes:

- a. If there was a material deviation from procedure that affected the outcome, the Appeals Officer may remand the matter to the Hearing Panel/Officer to rectify the error, or in rare cases where the error cannot be resolved, a new hearing may occur.
- b. If a conflict of interest or bias on the part of the Title IX Coordinator, investigator, or decision-maker is deemed to have affected the outcome, the Appeals Officer may remand the case to an appropriate place in the process to rectify this affect.
- c. If newly-discovered information appears relevant, the Appeals Officer can recommend that the case be returned to the Decision Maker/Hearing panel to assess the weight and effect of the new information and render a determination after considering the new facts.
- d. If the sanctions appear inappropriate or disproportionate, alter the sanctions, accordingly.
- e. Affirm the findings and sanctions.

The Appeals Officer will issue a written decision on the appeal simultaneously to the Reporting Party, Responding Party and Title IX Coordinator within ten (10) business days from the date of the submission of all appeal documents by both parties. The decisions of the Appeals Officer are final.

At the completion of the appeal, Corrective action(s) imposed are implemented immediately.

#### **Support for Parties after the FRP**

The Title IX/Equity Coordinator is available to provide support and to identify campus and external resources to assist all parties and witnesses once a resolution has been reached. The goal of such support is to address any personal needs and to facilitate the participation of all individuals in the campus community in whatever ways are appropriate given the outcome of the hearing and any corrective action(s) that may have been imposed.