

Healing Mountain Sexual Misconduct Formal Complaint Process & Procedures

14 August 2020 Edition

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NOTICE—

In compliance with required Title IX training and federal regulations regarding the protection of students, faculty and staff of this school against sexual harassment & misconduct, this manual is published and printed for appropriate administrative school personnel as guidance to follow for the reason of making this institution, its programs and activities a safe environment at all times.

It might also be noted as published on page 24 of the school catalog students, faculty and staff are protected against any discrimination and harassment, including sexual harassment. As stated in the school's

Notice of Nondiscrimination and Harassment Prevention—

“Healing Mountain gladly admits students regardless of race, religion, nationality, gender and gender identity, sexual orientation, and ethnic origin.

“We do not discriminate on the basis of any of the above categories. We reaffirm the principle that students, faculty, staff and clientele at Healing Mountain have a right to be free from the types of discriminatory harassment outlined above.”

If you feel any discrimination or harassment has occurred, contact the school's Title IX Coordinator who will handle your grievance quickly and confidentially.

The material in this publication was taken from the following OCR webinars

<https://www.youtube.com/watch?v=TdfT5R8ibm4&t=1846s>

<https://www.youtube.com/watch?v=yQ4->

[S5_Jahw&feature=youtu.be&utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=](https://www.youtube.com/watch?v=yQ4-S5_Jahw&feature=youtu.be&utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=)

(For more info visit healingmountain.edu and at the bottom click on additional resources)

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Written Grievance Procedures—

- The school’s written grievance procedures for dealing with sexual harassment and sexual misconduct is in compliance with new 2020 regulations as published by the OCR (Office of Civil Rights).
- The grievance procedures themselves cannot discriminate on the basis of sex, and any additional provisions listed in the school catalog must apply equally to **complainants** and **respondents**.
- This written grievance procedure will include ten (10) other specific items as enumerated on the pages following hereafter.

Definitions—

Complainant is

a term used to identify a person who is or has experienced or is or has been allegedly victimized by sexual harassment and/or sexual misconduct.

Respondent is

a term used to identify a person who has been accused of alleged perpetrating sexual harassment and/or sexual misconduct.

Requirement 1— Treat All Parties Equitably

- The school’s grievance policy must treat complainants and respondents **equitably** by providing remedies to a complainant if a respondent is found responsible, and by following the prescribed grievance process imposing discipline on a respondent.
- The remedies for the complainant have to be designed to restore or preserve equal access to the school’s education program(s) or activities.
- Unlike supportive measures in place with or without a grievance process pending, a complainant’s remedies CAN be punitive or disciplinary against the respondent.

Definitions—

Equitably means
*in a fair and impartial
manner.*

Requirement 2— Objective Evaluation of Evidence

- The school’s grievance policy must ensure an objective evaluation of all relevant evidence — including **inculpatory** and **exculpatory** evidence.
- Credibility determinations can’t be made on the basis of a person’s status as a complainant, respondent, or as a witness to any event or events.

Definitions—

Inculpatory means
*to accuse, blame,
or to incriminate.*

Exculpatory means
*to show or demonstrate
that someone is not guilty
of wrongdoing.*

Requirement 3— Training; No Conflict of Interest

- Individuals involved in the process — like the Title IX Coordinator, investigators, decision-makers, or facilitators of informal, voluntary resolution efforts — must not have any **bias** or conflict of interest.
- These individuals must also be trained. The materials used to train Title IX personnel can't rely on sex stereotypes, must promote **impartial** investigations and **adjudications**, and must be posted on the school's website (*if a school does not maintain a website, the school must make them available for public inspection upon request*).

Definitions—

Bias means

prejudice in favor of or against one thing, person, or group compared with another, usually to be considered unfair.

Impartial means

to treat all rivals, disputants equally; fair and just.

Adjudications mean

the action or process of a formal judgement or decision on a disputed matter.

Requirement 4— Presumption of Innocence

- Under the school’s grievance procedures, the respondent must be **presumed** not responsible, so that any finding or responsibility only comes at the conclusion of the grievance process.

Definitions—

Presume means

to suppose something is the case based solely on its probability; rather than on fact.

Requirement 5— Reasonably Prompt Time Frames

- The **grievance process** must include reasonably prompt time frames for resolving complaints of sexual harassment.

*(There is no actual guidance from the US DOE or OCR referring to what is exactly considered a prompt time frame. In referring to an **incident report**, Healing Mountain’s VAWA training states that “some investigations may require several meetings at different levels involving people with different schedules — so a report back may take from several days to a week or more; especially if local law enforcement is involved.” While an incident report may only take several days to a week or more — including those factors listed below, the disposition of the grievance process may take up to several months or more.)*

- Temporary delays are permitted for good cause only. Good cause can include law enforcement activities, the absence of a party or witness, the absence of a party’s advisor of choice, or the need to provide language assistance or accommodation of disabilities.

Definitions—

Grievance Process

in this context can

refer to include

any and /or all of

the following:

(1) the collection of

information for the

Title IX Coordinator

to issue an

Incident Report,

(2) an informal mediation

between complainant

and respondent,

(3) a formal hearing to

adjudicate a decision,

and/or

(4) an appeal of a formal

adjudicative decision.

Requirement 6— Description of Range of Outcomes

- The grievance process must describe or list the range of possible **remedies** and disciplinary **sanctions** that could occur following a determination of responsibility or adjudicative decision.

Definitions—

Remedies in

this context mean a range of possible things a school can provide to the complainant to remedy the negative impact experienced by the alleged sexual harassment or misconduct that occurred.

Sanctions in

this context mean a list of possible corrective measures taken to protect the complainant from the respondent's sexual harassment or misconduct.

Requirement 7— Standard of Evidence

- The grievance process must state which standard of evidence the school will use to reach a determination regarding responsibility, to be used for all sexual harassment proceedings.
- Schools can choose between the:
 - (1) **preponderance of the evidence** standard, and
 - (2) **clear and convincing evidence** standard
- Whichever standard the school chooses, it has to use that standard for all formal complaints of sexual harassment, whether the respondent is a student, or employee, including a faculty member.
- All sexual harassment proceedings must have the same standard of evidence.

*(The reason Healing Mountain chose the second determination — **Clear and Convincing Evidence** — is that it asks whether sufficient evidence has been present to make it highly probable to be true that the respondent engaged in the alleged sexual harassment.)*

Definitions—

Preponderance of Evidence asks

*was it more likely
than not that the
respondent committed
the alleged sexual
harassment.*

Clear and Convincing

Evidence asks

*whether sufficient
evidence has been
presented to make it
highly probable to be true
that the respondent
engaged in the alleged
sexual harassment.*

Requirement 8— Right to Appeal

- The grievance procedures they have to contain the **right to appeal** the result of a grievance process, and *information about how to invoke the right to appeal.*
- Schools must offer an appeal to every party on certain bases, and schools also have the option to expand the bases on which an appeal may be taken, so long as they apply those bases equally to both parties.

Definitions—

Right to Appeal

*means either party —
the complainant or
the respondent —
have the right
to appeal the decision
of determination
in the adjudicative
grievance process.*

Requirement 9— Description of Range of Supportive Measures

- The School’s grievance process must describe the range of **supportive measures** available to complainants and respondents.

Definitions—

Supportive Measures

measures provided to support complainants and respondents in the wake/aftermath of both the sexual harassment or misconduct, as well as the adjudicative determination.

Requirement 10— Legal Privileges

- The school’s grievance process must explain that no information protected by a legal privilege, such as attorney-client privilege or the doctor-patient privilege, can be used during an investigation unless the person holding that privilege has waived it.
- Neither a party nor the school is allowed to seek, permit questions about, or allow the introduction of evidence that is protected by a recognized privilege.
- Individuals can always opt to waive their own privileges, if they want, but they don’t have to.

Definitions—

Legal Privilege

refers to a privilege provided in legal hearings to protect any conversation(s) that otherwise may be damaging toward the complainant or respondent.

Chapter 1— How to File a Formal Complaint

Chapter 1

Any person can file a formal complaint regarding sexual harassment and/or sexual misconduct. Complaints can be delivered either in person, telephone, by mail or email. The most common person to file a complaint is the victim, however bystanders who witness the harassment or misconduct are encouraged to speak up both at the time of the behavior occurs and afterwards in way of filing a complaint. **NOTE:** *It might be noted that bystanders/witnesses should first consult with the victim prior to filing a formal complaint; if nothing more than informing the victim of their intention.*

While a person can file a formal complaint to any school employee, **Responsible Employees** are required to pass the information to the **Title IX Coordinator** who will process the complaint, investigate allegations and create an **Incident Report**. There are two types of Incident Reports:

- (1) **Non-Identifying Incident Report**, which is generated when the complainant wishes to remain anonymous using confidential communication
- (2) **Identifying Incident Report**, which is generated in which parties are identified within the report

TITLE IX Coordinator: *Jeremy Kellum*
601-329-9204 jeremy@healingmountain.edu

NOTE: *It might be noted here that Non-Identifying Incident Reports — while investigated — cannot proceed to adjudicative hearing portion of the grievance process to determine validity of the alleged harassment and or misconduct.*

Definitions—

Responsible Employee

refers to those key campus or school administrators who are trained annually as to their responsibilities concerning assisting victims in handling complaints properly, and also turn all pertinent information over to the

Title IX Coordinator —

who is trained in all things pertaining to VAWA — to investigate allegations of harassment and/or misconduct prior to creating an

Incident Report, which is maintained on file and for sending to relevant governmental agencies for processing.

Responsible Employees are to first explain to victims their rights pertaining to **Privileged Communication** with a clergy member or professional counselor, or **Confidential Communication** with a victim advocate assigned to each campus. If the victim or complainant wishes to proceed with filing a complaint, then they should meet with the Title IX Coordinator.

SLC campus Victim Advocate: *Brandie Fresques*
801-678-4031 brandie@healingmountain.edu

Orem campus Victim Advocate: *Maile Roberts*
808-557-9360 maileroberts@healingmountain.edu

During the meeting with the Title IX Coordinator, the complainant provides as much information as possible (*date, time, place of incident, victim name, alleged perpetrator, describe the incident in detail*) for the Title IX Coordinator to fully investigate the matter in a **timely manner** prior to creating an Incident Report, which they then pass on to school administrators.

(There is no actual guidance from the US DOE or OCR referring to what is exactly considered a “timely manner.” In referring to an incident report, Healing Mountain’s VAWA training states that “some investigations may require several meetings at different levels involving people with different schedules — so a report back may take from several days to a week or more; especially if local law enforcement is involved.” While an incident report may only take several days to a week or more — including those factors listed below, the disposition of the grievance process — including an adjudicative hearing — may take up to several months or more.)

Definitions—

Privileged Communication

refers to communication between a victim and their clergy or professional counselor, which cannot be used in an incident report.

Confidential Communication

*refers to communication between a victim and a **victim advocate** wherein rights are communicated along with a list of agencies to assist the victim.*

Timely Manner

refers to the time in which something is completed

Chapter 2— Adjudicative Hearings

School administrators in conjunction with the Title IX Coordinator determine whether to hold a **grievance proceeding**; otherwise called an **adjudicative hearing**. Sometimes the terms can combine terms; such as adjudicative proceeding.

Prior to the hearing, a notification is sent out to the complainant and respondent wherein they are informed of their right to have legal representation (advisor) and any witnesses present at the hearing. Also, the notification will inform both parties to bring any and all evidence not already submitted for an objective evaluation; including inculpatory and exculpatory evidence. Additionally, participants are informed of their right to appeal the hearing’s decision. This occurs at the beginning of the adjudicative proceeding.

The school (recipient) has assigned a single individual employee as its **Decision-Maker** to preside over and determine the decision of the hearing.

Salt Lake City Campus

Adjudicative Hearing Decision-Maker: Don Liufau
801-318-5139 don@healingmountain.edu

Orem Campus

Adjudicative Hearing Decision-Maker: Jesse Nikola
801-597-7886 jesse@healingmountain.edu

NOTE: *If there is any real or perceived conflict of interest or bias, another trained individual employee will be assigned as a decision-maker.*

Definitions—

Grievance Proceeding,

sometimes called an

Adjudicative Hearing,

refers to those the formal meeting where

the complainant,

the respondent and

any parties representing

each party are invited

along with any

witnesses/bystanders.

Decision-Maker

refers to an

individual assigned

to preside over

and determine

the decision of the

grievance proceeding.

Training for Decision-Makers

Decision-Makers must receive appropriate and sufficient training on:

1. Definition of **sexual harassment** § 106.30
2. Scope of recipient's Title IX education program or activity
3. How to conduct an investigation, the school's grievance process, including hearings held by the school
4. Appeals, and informal resolution processes as applicable
5. How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias
6. Issues of relevance with respect to proposed questions and the introduction of evidence, including understanding that questions and evidence about the complainant's sexual predisposition or prior sexual behavior are generally not relevant
7. Additionally, a recipient must ensure the decision-makers receive training on any technology to be used at a live hearing
8. Sufficient training on technology to be able to use said technology if needed during the hearing

Sexual Harassment,

includes:

Quid Pro Quo —

pressure by one in authority on someone in a subordinate position, with the aim of obtaining sexual favors;

Unwelcome Conduct —

any behavior or conduct of a sexual nature, determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school's education program or activity on or off campus; and/or

Sexual Assault,

Dating Violence,

Domestic Violence,

and Stalking.

Responsibilities of Decision-Makers

During the grievance process, the decision-maker must:

- Weigh relevant evidence, and decide whether it meets the school’s standard of evidence for sexual harassment allegations
- Determine the relevance of each cross-examination question before a party or witness answers
- After a decision has been reached, decision-makers must issue a written determination, which includes among other elements:
 - Allegations
 - Facts listed
 - Evidence presented
 - Conclusions
 - Reasons for conclusions

In the event there is not an appeal pending or the appeal hearing has concluded, the incident report, adjudicative hearing written determination, and the written determination of the appeal are forwarded to relevant governmental regulatory agencies (*DOPL — the Division of Professional Licensing — when the incident involves an LMT or licensed massage therapist, the US DOE — Department of Education, and/or local law enforcement officials — when crimes were committed*).

(continued)...

Sexual Assault—

includes: forced vaginal, anal or oral penetration or attempted penetration, forced sexual intercourse, inappropriate touching, forced kissing, child molestation, sexting, or sexual torture

Dating Violence—

violence by a person who is or has been in a social relationship of a romantic or intimate nature

Domestic Violence—

violence by current or former spouse or intimate partner

Stalking—

When people pursue & attempt to insert themselves into or control the lives of the victim; includes cyber-stalking

Prior to the Hearing

Prior to the live hearing:

- All statements of the incident must be submitted to the decision-maker by complainant, alleged victim, and/or respondent
- All evidence for all parties must be submitted to the decision-maker for review
- All questions to complainant (*alleged victim or witness*) and respondent must be submitted to the decision-maker prior to the hearing
(If any questions are determined to be irrelevant by the decision-maker, the reasoning must be provided in writing ahead of hearing)

NOTE: *It might be noted here that additional followup (cross-examination) questions must be allowed, which are done so in live real time during the hearing.*

Definitions—**Cross-examination**

refers to questions asked to either party by party advisors.

Live Hearings

- At postsecondary schools, *a live hearing must be held*. Notably, however, if any party requests it, the entire hearing must be held with the parties located in separate rooms, with technology (i.e., Zoom) enabling everyone to see and hear each other
- **Appropriate accommodations** must be made available during the proceedings for persons with disabilities requesting it, including — but not limited to — visual, auditory, and/or written communication
- An **audiovisual recording** of the hearing must be made, and made available to both parties for inspection and review when the hearing is completed

In the event there is not an appeal pending or the appeal hearing has concluded, the incident report, adjudicative hearing written determination, and the written determination of the appeal are forwarded to relevant governmental regulatory agencies (*DOPL — the Division of Professional Licensing — when the incident involves an LMT or licensed massage therapist, the US DOE — Department of Education, and/or local law enforcement officials — when crimes were committed*).

Definitions—

Appropriate

Accommodations

refers to reasonable accommodations made by the school to accommodate either party when requested.

Audiovisual

Recording *refers*

recording the proceeding via Zoom when parties are in separate rooms, OR in having someone operate a video recorder during the proceeding manually.

Hearing Notification Email

- Written notification of a live adjudicative hearing will be sent out to complainant, respondent and witnesses via email no less than 30 days prior to the actual date of the live hearing. Elements required to be contained in the notification — but not limited to — include:
 1. Date, time, and place of hearing
 2. Notice that reasonable accommodations are available to all parties with disabilities who request such *no later than 15 days prior to the date of the hearing*
 3. Notice that the hearing will be recorded in audiovisual format to be available to all parties for inspection and review after the determination is sent out
 4. Notice that all statements and questions must be submitted in written format as well as all evidence *no later than 15 days prior to the date of the hearing*
 5. The requirement to choose an advisor to represent and speak on behalf of the complainant, victim, and/or respondent (*with notice back no later than 15 days prior to the date of the hearing*)
 6. The right for all parties to choose to attend or not attend the hearing (*with required notice back no later than 15 days prior to the date of the hearing*)
 7. The right of any party to choose not to appear at the live hearing, or to opt not to answer cross-examination questions. **PLEASE, BE ADVISED:** *this choice, however, will exclude that party's or witness's statements, which may affect the final outcome of the hearing.*

Cross Examination

- 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 any decision to exclude a question as not relevant
(From page 17 – Prior to the Hearing):
- All questions to complainant (*alleged victim or witness*) and respondent must be submitted to the decision-maker
(*If any questions are determined to be irrelevant by the decision-maker, the reasoning must be provided in writing*)
- At the postsecondary level, the **party’s advisors** must be allowed to cross-examine other parties and all witnesses
- Cross-examination at live hearings must be done **directly, orally**, and in **real time** by the party’s advisor of choice and never by a party personally
- If a party or witness chooses not to appear at the live hearing, or opts not to answer cross-examination questions (*which is their right to do*), the decision-maker merely excludes that party’s or witness’s statements, and evaluates any evidence that doesn’t involve those statements. The decision-maker must never make inferences — positive or negative — about an individual’s choice not to be cross-examined or to decline to answer certain cross-examination questions.

Definitions—

Inference means

to infer either positive or negative consequences would or could occur should an individual choose not to be cross-examined.

Party Advisor

refers to the person chosen by the party who represents and advises them during the live hearing.

Directly, Orally,

and in Real Time

refers to how cross-examination occurs.

Questions are asked directly to the party without allowing them time to prepare a written answer.

Exceptions to Prior Sexual History Relevance

- Prior sexual history questions are never relevant, with only two narrow exceptions:
 1. When prior sexual history is offered to prove someone other than the respondent committed the conduct in question
 2. When the sexual behavior between parties proves consent during that specific conduct occurrence in question — *not consent in prior occurrences*

NOTE: Consent...

- (1) *Must be informed, voluntary, and mutual, and can be withdrawn at any time*
- (2) *There is no consent when there is force thru coercion, intimidation, threats, or duress*
- (3) *A victim cannot consent to quid pro quo conduct*
- (4) *Silence or absence of resistance does not imply consent*
- (5) *Past consent to sexual activity with another person does not imply ongoing or future consent with that person. or consent to that same sexual activity with another person*
- (6) *There is no consent if a person is mentally or physically incapacitated or impaired so that the person cannot understand that fact, nature, or extent to the sexual situation; this includes impairment or incapacitation due to alcohol or drug consumption that meets the standard, or being asleep or unconscious*

Complainant and Respondent Representation

- Both parties (*complainant and respondent*) are to have an advisor representing them that will ask questions to the opposing party during the live hearing
- No party (*complainant or respondent*) can ask questions directly during the live hearing
- No party can ever be allowed to ask questions or cross-examine any witness or other party
- Before a complainant, respondent or witness answers a cross-examination or question, the decision-maker must first determine whether the question is relevant, and explain any decision to exclude a question as not relevant

NOTE: *Please refer to page 21 for exceptions to Prior Sexual History before rendering a decision as being or not being relevant*

Definitions—

Party Advisor

refers to the person chosen by the party who represents and advises them during the live hearing. The advisors are to be provided without fee or charge to both parties by the school.

Written Statement of Determination

After the evidence has been weighed, the determination has to be written. It must include these elements:

A. Allegations Identified that potentially constituting sexual harassment as defined in § 106.30 *(Please review definition of sexual harassment as found in the sidebar of pages 15-16.)* Also include the portion of the school’s policies that were violated as a result of the sexual harassment *(See pages 23-24 of the school catalog)*

B. Procedural Steps Taken — *based on the presumption of innocence* — including:
(1) The receipt of the formal complaint through the determination
(2) Notifications to the parties
(3) Interviews with parties and witnesses
(4) Site visits
(5) Methods used to gather other evidence
(6) Hearings held

C. Findings of Fact that support the determination

D. Conclusion after applying the facts to the portion of the school’s Code of Conduct/Ethics policy that applies to sexual harassment § 106.30

E. Statement of Rationale for results after each allegation, including a determination of responsibility, any disciplinary sanctions recipient imposes on the respondent,

continued...

Definitions—

Recipient

refers to the school adjudicating the hearing.

Code of Conduct

*refers to the school’s code of conduct as enumerated on page 23 of the school’s catalog under the heading **Warning, Probation, Dismissal** as well as the school’s **Code of Ethics and Conduct** on page 24 of the catalog.*

- F. Disciplinary Sanctions**, if any, the school will impose on the respondent
- G. Remedies and Rationale** for any remedies for the complainant, addressing how those remedies will restore or preserve equal access
- H.** All parties may submit a written statement to the school in support of or challenging the outcome of the initial adjudicative hearing
- I. Right to Appeal** statement of the school's procedures, including that the parties have the right to appeal the initial determination regarding responsibility, and the permissible bases for the appeal
(Please see page 25 Chapter 3 regarding the procedures on how to appeal)

Once the written determination is complete, it is to be sent out to all parties simultaneously via email.

If no appeal takes place, the initial determination becomes the final determination; otherwise the final determination occurs after completion of the appeals process when the written determination becomes final.

NOTE: *It is noted that the Title IX Coordinator is responsible for carrying out the remedies in the final determination.*

Addendum to Chapter 2—

Possible Disciplinary Sanctions the school may impose on the respondent include, but are not limited to:

- A written warning and/or probationary period
- Mandatory counseling
- Mandatory education and training
- No contact or restraining order
- Changes to academic or clinic schedules
- Revocation of certain campus privileges
- School suspension
- School dismissal

NOTE: *The final determination will be sent to various governmental agencies including local law enforcement to determine if criminal charges have occurred.*

Remedies for the complainant to restore or preserve equal access may include, but are not limited to:

- Order of protection, no contact order, restraining order or similar lawful order from the institution
- Changes to the working, academic or clinic situations
- Provide increased monitoring, supervision or security at locations or activities where the misconduct occurred
- Provide an escort to ensure the complainant can move safely between classes and activities while on campus
- Ensure the complainant and perpetrator do not share classes or activities
- Provide resources for comprehensive, holistic, victim services including medical, counseling as well as academic support services like tutoring, or arranging extra time to complete or re-take a class or withdraw from a class without an academic or financial penalty imposed by the school

NOTE: *It is noted that some protective remedies may be available prior to the grievance process final determination.*

Chapter 3— The Appeal Process

Either complainant or respondent has right to appeal the determination decision in writing no later than 14 days after the written determination has been sent out.

An appeal can only take place if:

- (1) There is evidence the determination decision was made in error because of a procedural irregularity during the original adjudicative hearing
- (2) There is new evidence not reasonably available at the time of the first hearing that would have affected the responsibility or dismissal enumerated in the initial written determination
- (3) There is evidence either the Title IX coordinator or the decision-maker had a clear conflict of interest or bias that would have affected the adjudicative hearing written determination

The school (recipient) has assigned a single individual employee to serve as **Decision-Maker** to preside over and determine the decision of the Appeal proceeding.

Salt Lake City Campus

Appeal Hearing Decision-Maker: *Jesse Nikola*
801-597-7886 jesse@healingmountain.edu

Orem Campus

Appeal Hearing Decision-Maker: *Don Liufau*
801-318-5139 don@healingmountain.edu

NOTE: *If there is any real or perceived conflict of interest or bias with the appeal decision-maker, another trained individual employee will be assigned as a decision-maker to the appeal proceeding.*

Definitions—

Appeal Proceeding,
refers to the formal meeting where another decision-maker hears an appeal by either the complainant or respondent and any parties representing them are invited to present new evidence that may affect the original adjudicative hearing's written determination.

The Appellate Process

These are the steps to follow for the appellate process:

- The school has to notify the parties in the written determination email and implement the appeal procedures equally
- Both parties must have equal opportunity to submit a written statement in support of, or challenging the outcome of the initial adjudicative hearing
- Along with the written statement challenging and appealing the outcome of the initial adjudicative hearing, evidence must be submitted along with the appeal
- The person who decides the appeal cannot be the same person who reached the determination regarding responsibility, or the same person as the investigator/Title IX Coordinator
- After considering the parties written statements and submitted evidence, the decision-maker on appeal has to issue a written decision and send it to the parties simultaneously via email
- The school's determination about whether the respondent is responsible for the sexual harassment allegations becomes final after the appeal process has been completed

Definitions—

Appellate Process,

refers to

the formal process

where another

decision-maker reviews

written statements

and evidence

challenging the initial

written determination

and comes to a

final decision in

the grievance process.

Chapter 4— Informal Resolution Process

Schools can offer informal resolution in appropriate cases, *except where the respondent is an employee of the school.*

- Informal resolution may only be attempted if each party enters into the process completely voluntarily
- A school can never force, threaten, or require any party (*complainant or respondent*) into going into the informal resolution process
- If informal resolution proceeds, the school must provide a facilitator who is free from conflicts of interest or bias, and who has received special training
- The school still needs to provide complainants and respondents with notice of the allegations, notice of their rights, information about whether an informal process is confidential, and about withdrawing from the informal resolution process at any time before an agreement has been made to continue with an adjudicative hearing.

The school (recipient) has assigned a single individual employee to serve as **Informal Resolution Facilitator** to preside over and assist in finding resolution between the parties.

Informal Resolution Facilitator: *Randy Nikola*
801-455-6939 rjnikola@yahoo.com

NOTE: *If there is any real or perceived conflict of interest or bias with the appeal decision-maker, another trained individual employee will be assigned as a decision-maker to the appeal proceeding.*

Chapter 5— Other Issues: Record Keeping

Chapter 5

This duty extends for 7 years, and includes several categories of documents:

1. Records of a school’s investigation including:
 - Any audiovisual recordings or transcripts of any hearing
 - Records of any disciplinary sanctions
 - Records of any remedies provided to a complainant
2. Records of any appeal and the materials associated with an appeal; such as written statements by parties
3. Records of any informal resolution process, such as notices that go out to parties, and any documents created for the process
4. All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution. These materials also have to be posted on a recipient’s website, or made available for public inspection if the recipient doesn’t have a website.
5. Records of the supportive measures that they took in response to a report or complaint of sexual harassment, including any situations where a recipient offers supportive measures to a complainant only where an alleged victim of sexual harassment opts not to file a formal complaint.

NOTE: *This documentation has to include the basis for its belief that its was not deliberately indifferent, and that it took measures designed to restore or preserve equal access to its program or activity.*

Definitions—

Recipient

refers to the school in question.

Investigator

in this case refers to our school’s Title IX Coordinator.

Other Issues: Retaliation

- No school or person is allowed to retaliate against anyone for exercising their rights under Title IX.
- **NOTE:** *If any person feels they have been threatened, intimidated, or coerced discriminated against in an attempt to chill the exercise of Title IX rights, the person retaliated against can file a complaint with the school and the school must have procedures in place for the prompt and equitable resolution of such complaints.*
- The school should keep the identities of parties and witnesses confidential, unless disclosure of someone's identity is required under other laws or is necessary in order to conduct the grievance process.
- It is considered retaliation if a school charges a person with a code of conduct violation for the purpose of discouraging the person from pursuing a sexual harassment report or formal complaint, or exercising any other Title IX rights,
- If a code of conduct charge is for a violation unrelated to sexual harassment yet arises from the same facts as a sexual harassment allegation, that may be considered prohibited retaliation.

Definitions—

Chill means to horrify or frighten chill someone.

Retaliation means revenge to harm someone because they have harmed oneself.

Other Issues: Non-retaliatory Conduct

- It is NOT retaliation for a school to punish someone for making a bad-faith, materially false statement during a Title IX grievance process.
- **NOTE:** *The school cannot draw a conclusion of bad faith solely based on the outcome of the case.*
- The anti-retaliation provision in the final regulations also expressly states that engaging in protected speech under the First Amendment never constitutes retaliation

Other Issues: Free Speech

- The DOE’s Office of Civil Rights (OCR) can never require a school to violate the First Amendment
- When OCR investigates a school for possible Title IX violations, OCR will never view a school’s attempt to suppress free speech as an appropriate response to sexual harassment

NOTE: *A school can never rely on restricting constitutionally protected speech as a way of showing the school has satisfied its duty not to be deliberately indifferent to alleged sexual harassment*

If you have further questions regarding the new regulations the OCR encourages you to email its Outreach Prevention Education Non-discrimination (OPEN) Center at: T9questions@ed.gov

Definitions—

Bad-faith means
to intentionally deceive.

Indifferent
means to have no particular interest or sympathy for — being or showing unconcern for something.