



# **Title IX Grievance Procedure for Staff**

Approved August 14, 2020

## **Preamble**

[Title IX](#) of the Education Amendments of 1972 protects individuals from sex discrimination in educational programs and activities at institutions that receive federal financial assistance. In common language, Title IX prohibits Sexual Harassment and sets forth guidelines for institutions to address such instances.

The Title IX grievance procedures for staff apply when a member of the Reed community files a Formal Complaint that alleges a staff member has committed Sexual Harassment, as defined by the [College's Title IX policy](#), on campus or within the College's educational programs.

## **I. Title IX Formal Complaints**

This grievance process applies only where a Complainant or the College's Title IX Coordinator has signed a Formal Complaint.

If no Formal Complaint is filed, the Title IX grievance process will not be initiated. Even in the absence of a Formal Complaint, however, the College may address inappropriate conduct through other policies and procedures.

## **II. During the Title IX process, Complainants and Respondents can expect:**

- II.1. A prompt and equitable response to reports of Sexual Harassment;
- II.2. To receive supportive measures reasonably available that are nonpunitive, non-disciplinary, and not unreasonably burdensome to the other Party while designed to ensure equal educational access, protect safety, or deter Sexual Harassment;
- II.3. Information about how to access confidential resources and other forms of support;
- II.4. Written notice of the alleged prohibited conduct, potential policy violations, and details about the grievance procedure;
- II.5. An impartial procedure conducted by individuals free from conflicts of interest and bias;
- II.6. A procedure that includes the presumption that the Respondent is not responsible for a policy violation unless and until a determination regarding responsibility is made at the conclusion of the process;
- II.7. Determinations made according to preponderance of the evidence ("more likely than not");
- II.8. The opportunity to be accompanied by up to two Advisors of their choice in all meetings and proceedings related to a report and/or Formal Complaint;
- II.9. Timely notice of any meeting at which a Party's presence is requested, with sufficient time to prepare for the meeting;
- II.10. Autonomy to decline to participate, although the College may choose to continue the grievance procedure even if the Complainant and/or Respondent does not participate;
- II.11. To identify Witnesses, submit suggested questions in writing during the investigation, and provide evidence during the investigation and live hearing;
- II.12. Timely and equal access to any information that is used in the investigation and live hearing;
- II.13. Regular communication about the progress of the grievance procedure;
- II.14. Timely written notice of the outcome, including any sanctions and rationale;

II.15. The opportunity to appeal the outcome on one or more of the appeals criteria;

II.16. Reasonable accommodations for individuals with disabilities which can be requested through the Title IX Coordinator.

### **III. Supportive Measures**

Upon receipt of a Formal Complaint, the Title IX Coordinator will offer supportive measures to both the Complainant and Respondent. Supportive measures may take various forms but could include counseling through the college's Employee Assistance (EAP) program, mutual restrictions on contact between the Parties, or leaves of absence. Complainants and Respondents are encouraged to request the support that they feel would be most helpful. The Title IX Coordinator will consider all reasonable requests for support, and may consult with human resources in order to determine appropriate support measures.

### **IV. Administrative Leave**

The College may place a staff member who is a Respondent on administrative leave during the proceedings described in these procedures.

### **V. Advisor of Choice**

Complainants and Respondents may be accompanied by up to two Advisors of their choice at all meetings and proceedings related to a report and/or Formal Complaint. The College cannot limit who may be chosen as an Advisor. An Advisor may be, but is not required to be, an attorney. If a Formal Complaint is filed, Advisors are encouraged to speak with the Title IX Coordinator for an orientation to the College's policies and procedures, privacy protections, and expectations around participation and rules of decorum. Advisors who do not observe the rules of decorum may be removed from a hearing at the discretion of the Hearing Officer.

If a Formal Complaint is addressed through a live hearing, both the Complainant and the Respondent must have an Advisor for the purpose of conducting cross-examination at the live hearing. If either the Complainant or Respondent does not have an Advisor for the live hearing, an Advisor of the College's choosing will be assigned at no cost to the Party. A grievance procedure will not be unreasonably delayed to accommodate the schedule of an Advisor. Additional information about the role of the Advisor will be addressed during the Pre-Hearing Conference.

### **VI. Informal Resolution**

The college may pursue informal resolution at any point after a Formal Complaint has been filed and the Title IX Coordinator has provided notice of a Formal Complaint to all Parties. However, informal resolution cannot be pursued if the Complainant is a student.

Participation in any informal resolution process is voluntary. Both Parties must agree to participate in informal resolution for it to proceed.

Some examples of informal resolution may include

- both Parties meeting to discuss the incident with a mediator
- restorative justice practices
- the college addressing the incident as an employment matter

The informal resolution process is completed when both Parties have made a resolution agreement. At any time prior to the completion of the informal resolution process, a

Party may elect to withdraw from the informal resolution process and the college will proceed with this grievance procedure.

## **VII. Title IX Investigations**

After receiving a Formal Complaint, the Title IX Coordinator will provide written notice to Complainant and Respondent before initiating an investigation. The notice of investigation will include:

- The identities of the Parties;
- The conduct alleged to constitute potential violations under Title IX;
- The specific sections of College policy allegedly violated;
- A statement indicating that Respondent is presumed not responsible for the alleged conduct;
- A statement that the determination of responsibility will be made at the conclusion of the grievance procedure;
- A notice that Parties have the right to be accompanied in any grievance procedure meetings and hearings by up to two Advisors of their choice;
- The name of the Title IX Investigator assigned; and
- A statement that retaliation is prohibited.

The notice will be provided in advance of any interview with the Title IX Investigator, with sufficient time for meaningful preparation. If, in the course of the investigation, additional information is gathered that changes the nature of the allegations, an updated notice of investigation will be provided to the Parties. In considering the scheduling of investigative meetings, the investigator will balance the need for swift resolution with the need for the Parties to prepare for the meeting.

The purpose of the investigation is to collect information about the alleged violation. Title IX investigations of staff will be conducted by the Title IX Coordinator or their designee. Generally speaking, this will be a member of the College's human resources department or a third-party investigator.

The Title IX investigator will meet with both parties for an investigative interview. The investigator will gather each Party's account of the allegation, as well as any evidence the Parties wish to provide, such as written communications between the Parties. Although the Parties may provide information they wish the investigator to consider, the burden of gathering evidence sufficient to reach a determination and the burden of proof rests on the College and not the Parties. The Parties will have an equal opportunity to respond to questions, provide statements, submit evidence, and suggest Witnesses for the investigator to interview. The Parties may suggest questions to the Title IX investigator to be asked of the other Party or Witnesses. The Title IX investigator will review the suggested questions and, in their discretion, choose which questions are appropriate to the investigation. The Title IX investigator retains sole decision-making authority for who to interview and which questions to ask.

The Title IX Coordinator may combine multiple Formal Complaints that arise out of the same set of facts or circumstances into one investigation. Where multiple Complainants or Respondents are involved in the same investigation, the Parties will only be provided with the appropriate portion(s) of the investigative documents that relate to the Formal Complaint(s) in which they are a Party.

The College will seek to complete the investigation in a reasonable timeframe from the notice of investigation. The timeframe for the investigation may only be extended for good cause and with written notice to the Parties that cites the reason for the delay.

### **VIII. Investigation Report and Review of Evidence**

After the Title IX investigator has completed their information gathering process, a summary of the relevant evidence and copies of that evidence will be provided to the Parties, along with a deadline by which to respond. The Parties may respond with additional written information and/or they may request the Title IX investigator gather additional information. If the Parties wish to provide a written response, they must do so within 10 business days of the Title IX investigator providing them with the initial information.

Once the Parties have reviewed the initial information or the ten-day period has lapsed with no response from the Parties, the Title IX investigator will complete any follow up they deem necessary, write the investigation report, and submit it to the Title IX Coordinator. The matter will then move to a live hearing.

### **IX. Pre-Hearing Conference**

The live hearing will be presided over by a Hearing Officer. The Hearing Officer is assigned by the Title IX Coordinator and shall be neutral and impartial. The Hearing Officer cannot be the Title IX Coordinator or Title IX investigator.

Before a live hearing is conducted, the Parties, with their Advisors, will each have a pre-hearing conference with the Hearing Officer. The purpose of the pre-hearing conference is

- for the Hearing Officer to outline expectations for the live hearing;
- for the Parties to ask questions regarding the live hearing process;
- for the Parties to provide a list of Witnesses they request to appear at the hearing; and
- for the Parties to request that any new evidence (that was previously unavailable) be considered.

Evidence and Witnesses may only be presented at the live hearing if they were submitted to the Title IX Investigator and made available to the Parties for review, unless they were unavailable at the time of the investigation or the relevance was unknown until after the investigative report was submitted. The Hearing Officer will make determinations regarding any requests to present new evidence and new Witnesses at the pre-hearing conference.

After both pre-hearing conferences, the Hearing Officer will provide each Party and their Advisor with written notice of the date, time, and manner for the live hearing.

### **X. Live Hearing**

The format of the live hearing shall be as follows: introductory remarks will be made by the Hearing Officer, followed by a period of questioning of each Party and Witness, including oral, real-time cross examination of the Parties and Witnesses. Cross-examination will never be conducted by the Complainant or Respondent, but only by an Advisor. Cross examination shall be conducted in a manner that, in the Hearing Officer's sole discretion, is not harassing, intimidating, irrelevant, or redundant. The Hearing Officer reserves the right to remove an Advisor who treats a Party or Witness in an abusive, intimidating, harassing, or disrespectful manner. If this does occur, the

hearing may be postponed until an alternative Advisor can take part. Only relevant questions may be asked of a Party or Witness.

Before a Complainant, Respondent, or Witness answers a question by an Advisor, the Hearing Officer will first determine whether the question is relevant and briefly explain any decision to exclude a question as not relevant, or request rephrasing of the question.

The live hearing may be conducted virtually or with all Parties physically present in the same location. The hearing will be transcribed, and the transcription will be provided to the Parties if they request it.

A Party may choose not to participate in the live hearing and they may also choose not to answer a question. If a Party or Witness does not submit to cross-examination at the live hearing, the Hearing Officer must not rely on any statement of that Party or Witness in reaching a determination regarding responsibility. The Hearing Officer shall not draw any inferences based solely on a Party's or Witness's absence from the live hearing or refusal to answer cross-examination or other questions. If a Party chooses not to participate or answer a question, the Hearing Officer may still consider other evidence submitted by either Party, in making a determination of responsibility.

## **XI. Hearing Report**

The Hearing Officer prepares a hearing report that makes a determination of responsibility about whether Title IX was violated. The Hearing Report may include recommended remedies and sanctions.

The Title IX Coordinator will provide the Hearing Report to the Director of Human Resources (or designee), the Complainant's vice president/dean (if applicable), and the Respondent's vice president/dean. Complainant's and Respondent's vice presidents/deans, in consultation with the Director of Human Resources (or designee), will decide the appropriate sanction/s and remedies to enact.

## **XII. Notice of Outcome**

The Title IX Coordinator will provide the Parties simultaneous written notification of the Hearing Officer's determination and any sanctions imposed.

The notice of outcome will include instructions about how to appeal the determination of responsibility and/or sanctions.

The outcome will become final either upon delivery of the outcome of any appeal, or if an appeal is not filed by the date on which an appeal would no longer be considered timely.

## **XIII. Possible Sanctions and Remedies**

In cases where there is a finding of responsibility for violation of Title IX, sanctions may include one or more of the following. This list is not exhaustive.

- termination of employment
- suspension of employment for a defined period of time
- demotion or other change in job duties
- written warning
- improvement plan
- training
- apology

#### **XIV. Appeals**

The determination of responsibility and the sanctions decision of the Hearing Officer may be appealed by either the Complainant or Respondent. An appeal may only be made on one or more of the following grounds:

- procedural irregularity that affected the outcome of the matter;
- newly discovered evidence that could affect the outcome of the matter, or;
- conflict of interest or bias by the Title IX Coordinator, deputy Coordinator, investigator, Hearing Officer, or other decision-makers, that affected the outcome of the matter.

Parties have 10 business days to file a written appeal with the Title IX Coordinator, who will notify the President of the need to appoint an appeals board. The other Party will be notified when an appeal is received.

The President will appoint an appeals board that shall consist of at least two vice presidents/deans. The Title IX Coordinator shall provide the appointed appeals board with the Formal Complaint, the investigative report, the hearing report, all relevant evidence in the case, and any information submitted along with the appeal. At its discretion, the appeals board may make a determination based on these documents, or it may request written or verbal statements from the Parties. The appeals board may conduct its deliberations in a closed meeting.

The appeals board will conduct its work and submit its decision in writing to the Title IX Coordinator in a timely manner, typically within 15 business days of the appeal being filed. The decision of the appeals board will be final. The Title IX coordinator will notify the Parties in writing in a Final Notice of Outcome.