



# **Title IX Grievance Procedure for Students**

Approved August 14, 2020

The grievance procedure begins when a Formal Complaint is filed. The grievance procedure allows for both formal and informal resolutions, and includes investigation, live hearing, and appeals processes, as appropriate.

In certain circumstances, the Title IX Coordinator must or may dismiss Formal Complaints. A dismissal does not necessarily preclude the College from taking action under another policy, process, or procedure, or preclude consideration of additional information that becomes available after dismissal.

Resolution of a Formal Complaint will typically continue when a Complainant withdraws from the College. If a Respondent withdraws, graduates, or otherwise departs from the College after the filing of a Formal Complaint and prior to an outcome decision, the Title IX Coordinator will determine the appropriate next steps based on the circumstances.

## **A. Grievance Procedure Rights and Responsibilities**

Complainants and Respondents can expect:

- A.1.** A prompt and equitable response to reports of Sexual Harassment;
- A.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;
- A.3.** Information about how to access confidential resources and other forms of support;
- A.4.** Written notice of the alleged prohibited conduct, potential policy violations, and details about the grievance procedure;
- A.5.** An impartial procedure conducted by individuals free from conflicts of interest and bias;
- A.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;
- A.7.** 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;
- A.8.** Timely notice of any meeting at which a party's presence is requested, with sufficient time to prepare for the meeting;
- A.9.** 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;
- A.10.** To identify Witnesses, submit suggested questions in writing during the investigation, and provide evidence during the investigation and live hearing;
- A.11.** Timely and equal access to any information that is used in the investigation and live hearing;
- A.12.** Regular communication about the progress of the grievance procedure;
- A.13.** Timely written notice of the outcome, including any sanctions and rationale;
- A.14.** The opportunity to appeal the outcome on one or more of the appeals criteria (see section J);
- A.15.** Determinations made according to preponderance of the evidence ("more likely than not");

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

## **B. 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 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, 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 (see section G. 1.).

## **C. Informal Resolution**

The College may not offer informal resolution unless a Formal Complaint is filed. The initial written notice of allegations sent to the Parties by the Title IX Coordinator will include information about any informal resolution processes the College has available. Those informal resolution processes will include reasonably prompt time frames and be facilitated by persons who have been trained to serve impartially and who are free from bias or conflicts of interest. Participation in any informal resolution process is voluntary, and all Parties must agree to participate in the informal resolution process for it to proceed. The resolution process is completed when all Parties have signed a resolution agreement. At any time prior to the completion of the resolution process, a Party may elect to withdraw from the informal resolution process and the college will proceed with the Grievance Procedure. Upon the finalization of an informal resolution, the College will not proceed with other grievance procedures related to the same complaint, however, action may be taken in response to any Party's failure to abide by the terms of the informal resolution.

## **D. Investigation**

The Complainant and Respondent will receive written notice that an investigation has been initiated. The notice of investigation will include:

- The identities of the Parties involved;
- The conduct alleged to constitute potential violations under Title IX;
- The specific sections of College policy allegedly violated;
- A statement indicating that the 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.

The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the College and not the Complainant or Respondent. The Parties will have an equal opportunity to present Witnesses, including expert Witnesses, and to submit evidence. The Title IX Investigator will meet with the Parties and Witnesses to gather accounts and information relevant to the allegations under investigation. The Title IX Investigator will also gather any available physical evidence, including documents, communications between the Parties, and other electronic records as appropriate and available. The Parties may submit questions to the Title IX Investigator to be asked of Parties and Witnesses. The Title IX Investigator will review submitted questions and, in their discretion, may choose which questions are necessary and appropriate to the investigation and conduct any follow-up.

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.

A person's medical, counseling/psychological, and similar treatment records are privileged and confidential documents that a Party will not be required to disclose. Where a Party provides their written permission to share medical, counseling/psychological, and similar treatment records as part of the investigation, only the portion of the records directly related to the allegations raised in the Formal Complaint will be included in the case file for review by the other Party and for use in the investigative process.

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

The College will seek to complete the investigation in a reasonable timeframe from the notice of investigation. This timeframe may be extended for good cause with written notice to the parties of the delay and the reason for the delay. Examples of good cause include, but are not limited to, delays occasioned by the complexity of the allegations, the number of Witnesses involved, the availability of the Parties or Witnesses, any intervening school break, or other circumstances, all of which may extend the length of time it takes to complete the investigation. The Title IX Coordinator will provide regular updates to all Parties regarding the progress of the investigation.

## **E. Review of Evidence**

After the Title IX Investigator has completed the initial 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 deadline will be 10 business days after the material was made available, although extensions may be provided under extraordinary circumstances. Prior to the completion of the investigative report, the Parties will be offered the opportunity to provide a written response with additional information, a request that the Title IX Investigator gather additional information, and/or a request that the Title IX investigator re-consider information already provided.

## **F. Investigation Report**

Once the Parties have reviewed the evidence and have submitted responses, or the time period to submit such responses has passed, 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.

## **G. Live Hearing and Hearing Officer**

The Hearing Officer assigned by the College will be neutral and impartial. The Hearing Officer cannot be the Title IX Coordinator, nor can they have acted in the role of Title IX Investigator during the grievance procedure or served in another role at the college that would pose a conflict of interest. The Parties will be informed, in writing, of the specific Hearing Officer assigned to their live hearing.

The Parties will also be informed, in writing, of the names of the three members of the [Sexual Misconduct Board](#) assigned to their case (see section H.). The three members of the Sexual Misconduct Board will not be present at the live hearing, but will have an opportunity to recommend sanctions to the Vice President for Student Life (or designee) if there is a finding of responsibility.

Within four business days of receiving notice of the assigned Sexual Misconduct Board members, either the Complainant or Respondent may submit a written request to the Hearing Officer to replace a specific Sexual Misconduct Board member. The written request must include reasonable articulable grounds establishing bias or conflict of interest. The Hearing Officer will make the final decision about whether or not to replace a Sexual Misconduct Board member, but may consult with the Title IX Coordinator and/or the Sexual Misconduct Board.

The College will seek to schedule the live hearing in a reasonably prompt timeframe, and this timeframe may be extended for good cause with written notice to the Parties of the delay and the reason for the delay.

During the live hearing, each Party's Advisor will be responsible for asking relevant cross-examination questions to the other Party or Parties and any Witnesses. Advisors are encouraged to focus questions on disputed issues so as to assist the Hearing Officer in determining facts and issues of credibility. This questioning will be conducted orally, directly, and in real-time 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 questions a Party or Witness in an abusive, intimidating, harassing, or disrespectful manner, or who repeatedly asks non-relevant questions that are harassing, intimidating, disrespectful or redundant in content despite being warned

by the Hearing Officer. In the instance that an Advisor is removed, the live hearing may be suspended until a later date to permit an alternative Advisor to be obtained or assigned.

## **G.1. Pre-Hearing Conference**

Each Party will have their own pre-hearing conference. The Hearing Officer will communicate to the Parties and their Advisors the date, time, and format for their pre-hearing conference. The purpose of the pre-hearing conference is to allow the Parties to provide a list of Witnesses to appear at the hearing, to request that any new evidence be considered that was not submitted previously to the Title IX Investigator, and to share the availability of the Party and their Advisor for hearing dates.

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.

The pre-hearing conference is also an opportunity for Advisors to submit lines of questioning they intend to explore during the live hearing. The Hearing Officer will outline expectations and rules of decorum for the hearing. After reviewing each Party's Witness list, the Hearing Officer may, at their discretion, add names of other Witnesses for the purpose of appearing at the live hearing.

After the conclusion of the pre-hearing conferences, the Hearing Officer will provide each Party and their Advisor with written notice of the date, time, and manner for the hearing, which will typically occur no less than five business days after the conclusion of the final pre-hearing conference.

## **G.2. Live Hearing**

The live hearing may be conducted virtually, or with all Parties physically present in the same geographic location. The hearing will be transcribed, and the transcript will be the property of the College. The transcript will be made available to the Parties for review and inspection upon their request.

The Hearing Officer will provide an introduction detailing the purpose of the hearing, have those present identify themselves and their role, remind all Parties of the expectation to be candid and honest in their response, and provide a brief overview of the procedure and the anticipated order of the hearing. During the hearing, the Parties will have opportunities to provide opening and closing statements, present their accounts, answer questions from the Hearing Officer and answer cross-examination questions from the other party's Advisor. Parties will also have opportunities to have their Advisors question other Parties and Witnesses.

Advisors will be responsible for orally asking relevant questions, including those questions which challenge credibility, to the other Party or Parties and any Witnesses directly, in real-time and 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 questions a Party or Witness in an abusive, intimidating, harassing, or disrespectful manner, or who repeatedly asks non-relevant questions

that are harassing, intimidating, disrespectful or redundant in content despite being warned by the Hearing Officer. Cross-examination will never be conducted by a Party personally. Only relevant questions may be asked of a Party or Witness. Relevant questions are those tending to prove or disprove a material fact at issue.

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 Hearing Officer is not required to give a lengthy or complicated explanation of their determinations regarding relevancy. The Hearing Officer may later send to the Parties any revisions to the explanation of relevance that they provided during the hearing upon request.

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 an inference about the determination regarding responsibility based solely on a Party's or Witness's absence from the live hearing or refusal to answer cross-examination or other questions. However, other types of evidence submitted by a given Party or Witness showing the conduct alleged within a Formal Complaint may be considered, even if that Party or Witness does not submit to cross-examination. Further, a Respondent's verbal or written conduct that is alleged to constitute the Sexual Harassment at issue is not considered to be the Respondent's "statement"; information about or evidence of such conduct may be admitted even if the Respondent does not submit to cross-examination.

## **H. Notice of Outcome**

The Hearing Officer's written determination of responsibility will be submitted to the Vice President for Student Life (or designee). If the Respondent is found responsible for violating the Title IX Policy, the Vice President for Student Life (or designee) will consult with the three members of the Sexual Misconduct Board (generally consisting of at least one student, one staff, and a third person who is either a student or staff member of the Sexual Misconduct Board) assigned to the case to deliberate about sanctions.

The Vice President for Student Life (or designee) will issue a written decision letter to the Parties, including the Hearing Officer's determination of responsibility, the sanction(s) if any, and the rationale for each. The written decision letter will also provide the Parties with information about their options for appeal. The Vice President for Student Life (or designee) may also notify appropriate College officials, including but not limited to the Title IX Coordinator, a direct supervisor of a sanction, or other officials as necessary to implement the outcome 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.

## **I. Possible Sanctions & Remedies**

In cases where there is a finding of responsibility for violations of College policy, sanctions may include one or more of the following:

- Expulsion
- Suspension

- Community service
- Full exclusion from campus and all college-affiliated events
- Limited exclusion from campus
- Meetings with the Vice President for Student Life (or designee)
- Health and Counseling Center meetings
- Alcohol and Other Drug use assessments or other therapeutic interventions
- Consultation with other members of the community
- Educational programs
- Coursework at an external institution
- Apologies
- Behavioral expectations contract
- Reflection essays
- Financial restitution
- Disciplinary probation
- Loss of alumni privileges
- Restriction and/or hold on transcripts, registration, and receipt of diploma until sanctions have been completed
- Room inspection/search
- Removal from Reed owned housing
- Restrictions related to living in or accessing Reed owned housing
- Restrictions or removal related to on campus student employment, appointed/volunteer positions, or participation in college organizations or events

## **J. Appeals**

The decision of the Vice President for Student Life (or designee) may be appealed by either the Complainant or Respondent. Parties have 10 business days to file an appeal with the Appeals Board. Under extenuating circumstances, requests for extension of the appeals deadline must be requested in writing to the Vice President for Student Life (or designee) prior to the original deadline. The Vice President for Student Life (or designee) will determine whether or not an extension will be granted [*note: this individual will be a different person than the Vice President for Student Life (or designee) who issued the original Outcome Letter*]. The grounds for appeal are:

- J.1.** Procedural irregularity that affected the outcome of the matter;
- J.2.** Newly discovered evidence that could affect the outcome of the matter; and/or
- J.3.** 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.

The other Party will be notified when an appeal is received, and Parties will be informed of which Appeals Board members have been assigned to consider the appeal. At the time of the appeal, the complete case file shall be forwarded to the assigned Appeals Board. The assigned Appeals Board shall work from the case file, and may request new evidence as it deems fit. Each appeal document will be shared with all Parties in the original case, and the assigned Appeals Board will provide the Parties a period of five working days to provide a written statement to the assigned Appeals Board responding to the issues described in each written appeal. The written responses received by the assigned Appeals Board will be shared with all Parties. If the appeal is based on a claim



of procedural error, the assigned Appeals Board may consult the Hearing Officer or other decision-makers for that case.

If the assigned Appeals Board chooses to base its decision solely on the documentary record, it shall conduct its deliberations in a closed meeting.

Decisions of the assigned Appeals Board require the agreement of the assigned Appeals Board with no more than one dissenting vote and shall take the form of recommendations to the Vice President for Student Life (or designee). The decider of the appeal shall be a Reed staff member different from the person who made prior decisions in the case and their decision shall stand as the final outcome of the case. The appeals decision will be provided in writing to the Parties.

The Chair of the Appeals Board is responsible for assembling all appeal files, including the minutes of any hearings or meetings, correspondence to and from the board, and official conclusions and recommendations of the board, and forwarding them to the office of the Vice President for Student Life for record keeping.