



CHRISTOPHER NEWPORT UNIVERSITY

INSTITUTIONAL COMPLIANCE
AND TITLE IX

Sexual Misconduct Formal Complaint Process

Hearing and Investigation and Informal
Resolution Procedures

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Introduction to the Sexual Misconduct Formal Complaint Process

The Office of Institutional Compliance/Title IX (IC/TIX) is responsible for overseeing and coordinating the policy 1100 sexual misconduct formal complaint process in a fair and impartial manner with the presumption that no policy violation has occurred unless proven otherwise by a preponderance of the evidence at the conclusion of a hearing. Complainants and respondents may have an advisor of choice present with them at any meetings and proceedings for the formal complaint process. Allegations of sexual harassment involving employee respondents are generally addressed by the office of Human Resources using separate procedures.

To utilize the formal complaint process, a complainant must first file a formal complaint with IC/TIX.

Once a complainant has filed a formal complaint of sexual misconduct, there are **2** options available for reaching an outcome:

1. **The sexual misconduct investigation and hearing process** which is divided into distinct phases:
Investigation Phase 1: Evidence Collection
Investigation Phase 2: Evidence Review and Response
Investigation Phase 3: Draft Investigation Report Review and Response
Investigation Phase 4: Final Investigation Report Review and Response/Referral for Hearing
Hearing Phase 1: Notice of Hearing and Appointment of Decision Maker
Hearing Phase 2: Hearing Preparation
Hearing Phase 3: The Hearing and Deliberation
Hearing Phase 4: Notice of Outcome/Sanctions/Appeal
- Or**
2. **The sexual misconduct informal resolution process** which consists of the following phases:
Phase 1: Exploration of Informal Resolution
Phase 2: Informal Resolution Meetings
Phase 3: Formal Agreement and Completion of Process

General Formal Complaint Process Information

- CNU generally utilizes external investigators, decision makers, appeal officers, and informal resolution facilitators to conduct the policy 1100 sexual misconduct investigation and hearing or informal resolution processes.
- Every effort will be made to complete the investigation and hearing or informal resolution process (excluding any appeals, pauses for exploration of informal resolution, federal and state holidays, and days CNU is not open for regular business operations) no later than 90 business

days after the Written Notice of Allegation of formal complaint is issued to the parties by IC/TIX.

- Parties will be informed in writing of any extensions of timeframe and the rationale for such extensions. Parties may also request extensions by contacting IC/TIX in writing. If an extension is granted it will be extended to both parties and parties will receive written notice of the extension.
- Investigation interviews, hearings, and informal resolution meetings are generally conducted using video conferencing technology. Evidence and information are shared with the complainant, respondent, and their advisor of choice using a secure electronic platform.
- IC/TIX honors the privacy of parties involved in the formal complaint process to the extent possible and as required under policy 1100 and other applicable laws and regulations.
- As laid out in policy 1100, Amnesty for Drug and Alcohol Use, CNU does not pursue drug and alcohol charges through the Center for Honor Enrichment and Community Standards (CHECS) by student complainants and student witnesses that occurs within the context of a good faith report or formal complaint of sexual misconduct.
- CNU prohibits retaliation against a group or individual exercising rights under and/or participating in, or not participating in the sexual misconduct formal complaint investigation and hearing or informal resolution process.
- Supportive measures are available to complainants and respondents with or without the filing of a formal complaint.
- Individuals who need reasonable accommodations to access and participate in the programs and services of IC/TIX are encouraged to contact the office directly as soon as practicable. CNU students may instead contact the Office of Accessibility and Care Team Support (ACTS) for assistance with communicating the need for reasonable accommodations to IC/TIX. CNU employees may instead contact the Office of Human Resources for assistance.

Role of the Advisor of Choice

An advisor of choice may be anyone a complainant or respondent chooses to accompany them through the investigation and hearing process or the informal resolution process and may be, but is not required to be, an attorney. Generally, a witness should not be an advisor of choice. The party must provide written permission to IC/TIX in order for their advisor of choice to be included in communication for the process and for the advisor to have access to materials generated during the selected process.

During the investigation phase of the formal complaint process, or if selected, during the informal resolution process, an advisor of choice may speak directly with the party they are advising and may ask the investigator, IC/TIX, or, if applicable, informal resolution facilitator, clarifying questions about policy and procedure. However, an advisor of choice may not speak for the party they are advising.

For the purpose of the formal complaint hearing, the advisor of choice is required to ask questions (conduct cross examination) on behalf of the party they are advising. If a complainant or respondent does not have an advisor of choice who is able to fill the role of asking questions/conducting cross examination, one will be provided for the party.

Voluntary Participation, Voluntary Submission of Information, and Absence of a Party

Investigation and Hearing Process

Participation in the formal complaint investigation and hearing process, including answering questions is voluntary. The university, the assigned investigator, and assigned decision maker do not have a mechanism for compelling participation by the complainant, respondent, or witnesses. However, because the most accurate and fair review of the facts can best be accomplished when parties and witnesses are present, the parties and any requested witnesses are strongly encouraged to participate in the investigation and attend and participate in the hearing. Only witnesses who participate in the investigation phase of the process will be eligible to participate in the hearing.

The assigned investigator does not have a mechanism for compelling individuals or agencies to share documents, video, or audio that may be relevant to the investigation of a formal complaint including but not limited to medical reports, educational records, correspondence (either electronic or mailed) that may have taken place between parties involved, surveillance video, police reports, personal text messages, phone records, other electronic communication, pictures, video, maps, room layouts, etc. If the assigned investigator or IC/TIX is unable to obtain such information, parties who wish to include any such information may submit it directly to the investigator.

At the hearing, if a party or witness is absent or does not submit to questioning, the decision maker may exercise their judgement in evaluation of whether their statements to the investigator has sufficient indicia of reliability to be admissible, and if so, in evaluating what weight, if any, to give to the statement of a party or witness not subject to questioning. In determining relevance, admissibility, and weight, the decisionmaker may consider longstanding principles of jurisprudence and evidence. The decisionmaker may not draw any adverse inference based solely on the decision of a party or witness to not attend or participate in the hearing.

Informal Resolution Process

Parties must agree in writing to participate in the informal resolution process and at any time, prior to the signing of a written formal agreement, may elect to withdraw and initiate or resume the formal complaint investigation and hearing process. Further, the university does not require participation in the informal resolution process as a condition of enrollment, continuing enrollment, employment, continuing employment, or enjoyment of any other right, or waiver of the right to an investigation and hearing of formal complaints of sexual misconduct.

Evidence and Question Limitations for the Formal Complaint Investigation and Hearing Process

Sexual History

Evidence and questions about the sexual predisposition of a party and current/prior sexual history of a party are not permitted unless evidence about the party's prior sexual history is offered to prove someone other than the respondent committed the conduct alleged by the complainant or evidence

and questions about the complainant's prior sexual history with the respondent is offered to prove consent.

Privileged Information

The assigned investigator, IC/TIX, and the decision maker cannot access, accept, 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 or paraprofessional's capacity, or assisting in that capacity, and which are made or maintained in connection with the provision of treatment to the party, unless the party voluntarily provides written consent to include the information in the investigation and hearing process. If such information is voluntarily submitted by a party for inclusion, the scope of questions permitted during the hearing will be limited only to what the party has voluntarily provided and may not seek to elicit new information.

Pattern Evidence

Evidence of a pattern of conduct by the respondent that is similar in nature to the alleged behavior and that occurred either prior or subsequent to the alleged incident that is the focus of the formal complaint process, regardless of whether there has been a finding of responsibility, may be permissible and deemed relevant if;

- The previous incident was substantially similar to the present allegations;
- The information indicates a pattern of behavior and substantial conformity with that pattern by the respondent; or
- The respondent was subject to a previous credible allegation and/or was found responsible for a policy violation.

The assigned investigator will establish during the investigation of the incident(s) how pattern of conduct will be included. The Investigator will provide a summary of relevant pattern of conduct evidence in the investigation report to be included in the hearing.

Withdrawing a Formal Complaint

The complainant(s) may request to withdraw a sexual misconduct formal complaint at any time prior to an outcome being reached in the investigation and hearing process or the signing of a formal written agreement by both parties in the informal resolution process by notifying the Title IX Coordinator or Deputy Title IX Coordinator in writing.

- Withdrawal of a complaint generally results in dismissal of the complaint. Once a complaint is dismissed, it is closed and cannot be reopened for formal (i.e., the investigation and hearing process) or informal resolution.

Pausing One Process to Explore the Other

- At any time prior to reaching a determination in the investigation and hearing process, parties may request to pause the investigation and hearing process to explore the informal resolution process. However, once a determination has been reached in the hearing process, informal resolution is no longer available.
- At any time prior to both parties signing a written formal agreement in the informal resolution process, a party may choose to discontinue the informal resolution process to resume or initiate the investigation and hearing process.
- Information submitted for and generated during one process will not be made available for the other process.

- Parties are not required to pursue informal resolution before pursuing the investigation and hearing process.

Notice of Allegation

IC/TIX is required to provide respondents and complainants with written notice of allegation of formal complaint prior to beginning the investigation and hearing process or the informal resolution process. IC/TIX will generally send the written notice to the respondent and complainant's CNU issued email address. If a party does not have a CNU issued email address the written notice will be sent to the alternative email or mailing address on file with the university.

The written notice contains a detailed description of the allegations that are the focus of the formal complaint, directions for how to access the full formal complaint, the policy and applicable policy definitions, the procedures to be used, information about resources and supportive measures, a statement that retaliation is prohibited, information about what complainants and respondents can expect during the investigation process, how to request reasonable accommodations, contact information for IC/TIX, the right to have an advisor of choice present, a statement that the presumption is that no policy violation has occurred unless proven otherwise by a preponderance of the evidence in a hearing procedure, information about applicable transcript notations for the respondent as laid out in policy 1100 8.f. Transcript Notations, and information about amnesty for students for drug and alcohol use connected to a report or formal complaint of sexual misconduct as specified in policy 1100 8. b. Amnesty for Drug and Alcohol Use.

Once notice of allegation is delivered to the parties, the investigator or the informal resolution facilitator will reach out to the parties to begin the applicable process.

If there is a modification to the allegations listed in the notice of allegation, amended notice of allegation will be delivered to the parties.

Investigation Phase 1: Evidence Collection

The investigator will collect information and evidence which includes interviewing the complainant, respondent, and witnesses who elect to participate, and collecting and accepting documentation, information, and statements from the complainant, respondent, and witnesses. All information and documentation submitted to the investigator or collected by the investigator is made available to the complainant, respondent, and their respective advisor of choice for inspection and review.

The time frame for evidence collection may vary depending on the overall scope of the investigation, the volume of evidence, and the availability and responsiveness of the complainant, respondent, and witnesses to requests made by the investigator.

At any point during the investigation, the investigator in consultation with IC/TIX may determine it is necessary to extend or reopen the periods for evidence collection and/or review. In such cases, timelines for evidence collection or review may be modified by IC/TIX. Parties will be notified of any such decisions and rationale in writing.

Investigation Phase 2: Evidence Review and Response

The evidence collected during the information/evidence collection period will be made available to the complainant and respondent and their respective advisor of choice for review for a period of ten (10) business days via a secure electronic platform. The complainant and respondent will each have until the conclusion of the ten (10) business day period to submit a written response to the evidence directly to the investigator. The investigator is not required to accept late submissions.

Upon receipt of timely responses, the investigator will determine whether evidence collection and review should continue or whether to proceed to writing the investigation report. If evidence collection and review will continue, the investigator or IC/TIX will notify the parties of the continuation.

Investigation Phase 3: Draft Investigation Report Review and Response

After the evidence review and response period, the investigator will write a draft investigation report. The investigation report contains a summary of the relevant evidence and does not include a finding or recommendations. Relevant evidence is information which is more or less likely to prove an allegation to be true.

Upon completion, the investigator will make the draft investigation report available to the complainant and respondent and their respective advisor of choice via the secure electronic platform being used for the investigation for review and response. The complainant and respondent will each have until the conclusion of the ten (10) business day review and response period to submit a written response to the draft investigation report directly to the investigator. The investigator is not required to accept late submissions.

Upon receipt of timely responses, the investigator will determine whether investigation activity should continue or if the draft investigation report can be finalized. If the investigator determines that investigation activity will continue, the investigator or IC/TIX will notify the parties of the continuation.

Investigation Phase 4: Final Investigation Report Review and Response/Referral for Hearing

When the complainant and respondent are notified and receive access to the final investigation report, they will also be notified that the investigation portion of the formal complaint process has concluded. They will receive instruction regarding submitting a final response to the final investigation report (must be received no later than five (5) business days prior to the scheduled hearing) and they will be informed that within a set period of time they will receive Written Notice of Hearing.

- IC/TIX will retain a copy of the final investigation report as required by applicable institutional, state, and federal policies.

- IC/TIX will continue to provide reasonably available supportive measures to the complainant and respondent.
- The complaint, respondent, and their advisor of choice will retain their electronic access to all information gathered for and during the investigation including the original formal complaint, the notice of allegation and any amended or additional notices of allegation, evidence (including statements from parties and witnesses), relevant evidence, the draft investigation report, final investigation report, responses to the evidence, and responses to the draft investigation report in order to participate in the hearing process.

Sexual Misconduct Formal Complaint Hearing Process

Hearing Phase 1: Notice of Hearing and Appointment of Decision Maker

Notice of Hearing

IC/TIX will issue written notice of hearing to the complainant and respondent no less than ten (10) business days prior to a scheduled hearing. IC/TIX will generally send the written notice to the respondent and complainant's CNU issued email address. If a party does not have a CNU issued email address the written notice will be sent to the alternative email or mailing address on file with the university.

The written notice contains the potential policy violations, nature of the allegations, identities of the parties involved, the hearing procedures to be used, information on what complainants, respondents, and witnesses can expect during the hearing process, a statement about the right to have an advisor of choice present and the advisor's role, a reminder of continued access to all investigation materials, instructions for how to access the hearing once one is scheduled, the deadline by which the complainant and respondent can submit a final response to the investigation report prior to the hearing, the deadline by which a party may object to the decision maker, how to request reasonable accommodations, and the rules of decorum.

Appointment of The Decision Maker

The decision maker designated to conduct the hearing and reach a determination, must be someone other than the individual designated to investigate the formal complaint and generally will not be a member of the IC/TIX staff. The decision maker serves in a fair and impartial manner free from actual bias or conflict of interest. The presumption of the decision maker is that no policy violation has occurred unless proven otherwise by a preponderance of the evidence presented at the hearing. A party may object to the decision maker on the basis of demonstrated bias or conflict of interest by notifying IC/TIX in writing within four (4) business days of issuance of the notice of hearing.

Prior to the hearing, the decision maker will be provided secure electronic access to the formal complaint, notices of allegation, draft investigation report, final investigation report, all evidence made available to parties, written responses submitted by parties, and the parties' final written response to the final investigation report.

Hearing Phase 2: Hearing Preparation

IC/TIX will assure that the complainant, respondent, and their respective advisors of choice have secure electronic access to all information collected during and submitted for the investigation, any responses that the complainant and respondent submitted to the evidence, the draft investigation report, responses submitted by the complainant and respondent to the draft investigation report, the final investigative report, and any responses submitted by the complainant and respondent to the final investigative report. Parties will generally have such access at least ten (10) business days prior to a scheduled hearing. However, in situations where a party needs to have an advisor appointed less than ten (10) days prior to the hearing, the hearing will generally proceed as scheduled. Since final responses are not due until five (5) business days prior to a scheduled hearing, parties and the decision maker may have less time to review the final responses.

The appointed decision maker may also request to have separate pre-hearing meetings with the complainant and respondent to review the procedures for the hearing and answer any questions regarding the hearing format. The complainant and respondent's advisor of choice are expected to attend the pre-hearing meeting scheduled for the party they are supporting.

The parties may choose to provide a written response to the final Investigation report, which must be submitted to IC/TIX no later than five (5) business days prior to the scheduled hearing date. The parties and their advisors will be provided with the other party's written response if one is received and any response(s) received will be provided to the decision maker prior to the start of the hearing.

Hearing Phase 3: The Hearing and Deliberation

Hearing Format and Logistics

Hearings are conducted via video conferencing technology and attendance is limited to the complainant, respondent, advisors of choice, decision maker, and IC/TIX personnel who provide technical support. Witnesses may only attend at their scheduled time of appearance and are dismissed from the hearing once they are done.

- The decision maker in conjunction with IC/TIX records the hearing and no other recording of the hearing is authorized. Closed deliberations are not recorded.
- Hearings may last several hours and parties are asked to set as much time aside as possible for the hearing to provide flexibility if the hearing can't be completed in one session.

The decision maker has the authority and can exercise their discretion with respect to administering the hearing, and may change the order of the hearing. A typical hearing generally proceeds as follows:

1. brief opening statements by the complainant and respondent;
2. direct and/or cross-examination of the parties, and any witnesses by the decisionmaker;
3. cross-examination of the parties and any witnesses by the parties' advisors;
4. brief closing statements by the complainant and respondent.
5. Decision maker ends hearing, dismisses all parties, and enters into closed deliberation.

Rules of Decorum for the Hearing Process

The hearing process must be managed to ensure all participants receive a fair, impartial, and unbiased experience that allows the decision maker to gather information necessary to make a decision for the alleged violations in the case. During the process, all participants must adhere to the following expectations:

Respondents, Complainants, Advisors of Choice, and Witnesses must:

- Listen respectfully to the individual speaking without interruption including distracting gestures and utterances such as rolling of eyes, scoffing, speaking under the breath, throwing arms in the air, etc.
- Wait for the decision maker's prompt before speaking or answering a question.
- Avoid yelling, shouting, and speaking over other participants.
- Use respectful language that is not demeaning, derogatory, or disrespectful.
- During the hearing, direct questions about the Rules of Decorum or procedures directly to the decision maker.

Violation of Rules of Decorum

Determination regarding a participant's violation of one of these rules of decorum lies with the decision maker. If a participant violates an expectation of the Rules of Decorum or the hearing procedures, the decision maker will issue a verbal warning, identifying the expectation violated and how it was violated. Should a participant continue to violate these expectations or procedures, the decision maker will immediately call for a break. During the break, the decision maker will address the problematic behavior directly. If the participant refuses to comply with the warning given by the decision maker, or causes additional problems, the decision maker, may decide to take one or more of the following actions:

- Implement other methods to address the problematic behavior, as determined by the decision maker, that allows the hearing to continue in a fair manner for all participants.
- Remove the participant from the hearing. If the participant removed is an advisor for the complainant or respondent, a new advisor may be appointed by the university to serve as their advisor for the remainder of the hearing. The new advisor is provided at no cost to the party.
- End the hearing and potentially reconvene at a later date, at the discretion of the decision maker in consultation with IC/TIX, if the removed participant is the complainant or respondent.

Participants who are affiliated with CNU as either a student or employee may be referred for disciplinary action under another policy.

Questions by the Decision Maker

The decision maker may ask questions of the parties, witnesses, and/or the investigator(s) to aid the decision maker's objective evaluation of all relevant evidence in order to reach a determination regarding responsibility and, if applicable, appropriate sanctions and remedies.

Questions by the Parties assigned advisors (cross examination)

The parties may not question each other or any witness directly. Instead, question asking (cross examination) must be conducted directly, orally, and in real time by the party's advisor and never by a party personally. The decision maker will permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.

Relevancy Determinations and Pauses Before Response

All questions of parties and witnesses are subject to a relevancy determination by the decision maker. The advisor will offer the proposed question to a party or witness. Prior to the party or witness answering a posed question, the decision maker will consider the proposed question, and will determine if the question is allowed, disallowed, or needs to be rephrased. If the question is permitted by the decision maker, the decision maker will communicate to the individual to whom the question was directed that they may proceed with answering the question. The decision maker will explain any decision to exclude a question as not relevant, or to reframe it for relevance. The decision maker will limit or disallow questions on the basis that they are irrelevant, unduly repetitious, or abusive. The decision maker's determination is final. The decision maker will not hear arguments from an advisor on relevance once the decision maker has ruled on a question.

- Questions based solely on a person's status as a complainant, respondent, or witness may not be used to address credibility.

New Evidence Offered at Hearing

In the absence of good cause, information including the identification of witnesses that was discoverable through the exercise of due diligence, that was not provided to the investigator(s) during the investigation, will not be considered during the hearing unless the decision maker agrees to the admission of new evidence. If the decision maker agrees to admit the new evidence offered at the hearing, the decision maker may delay the hearing to provide parties time to review the information and/or instruct IC/TIX to reopen the investigation.

Standard of Evidence

At the conclusion of the hearing, the decision maker will determine whether a preponderance of the evidence (as defined in Policy 1100) substantiates that a violation of the policy occurred. A respondent will not be found in violation of the policy absent a finding by a preponderance of the evidence.

Investigator Role in Hearing

The investigator(s) may be called as a witness and be subject to questions by the decision maker and the parties through their advisors. Since the investigator does not issue a finding or recommendation in the investigation report, the investigator will not entertain questions regarding credibility of parties and witnesses, the investigator's impression of parties and witnesses, and/or opinion and recommendation regarding possible outcomes.

Closed Deliberation

After the hearing has concluded, the decision maker will enter into closed deliberation in order to objectively and fairly weigh all evidence in order to determine, by a preponderance of the evidence, whether it is more likely than not that a violation of policy has occurred. The decision maker will only impose sanctions and remedies if the decision maker determines by a preponderance of the evidence that a violation of policy has occurred. The decision maker conducts deliberations privately and the deliberations are not recorded. The decision maker will conduct the deliberation in a fair, impartial, thorough, and efficient manner. The decision maker may request an extension and the parties will be notified of the extension.

The Decision Maker's Determination Report

Within ten (10) business days of concluding deliberation, the decision maker will provide in writing to IC/TIX, the decisionmaker's determination report which contains:

- A description of the alleged policy violation(s) and the policy(s) allegedly violated;
- A description of the procedural steps taken by CNU from the receipt of the formal complaint to the determination including inculpatory and exculpatory evidence;
- The finding for each alleged policy violation and the findings of fact that support the determination(s);
- Conclusions regarding the application of the relevant policy to the facts at issue;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility;
- Any sanctions issued;
- Any remedies provided to the complainant;
- Information on when the determination of the decision maker is considered final; and
- The procedure and permissible bases for any available appeal for either party.

Hearing Phase 4: Notice of Outcome

Upon receipt of the decision maker's determination report, IC/TIX will provide written notice of outcome to the parties via email. The notice will include secure electronic access to the decision maker's determination report, instructions for submitting an appeal including deadline for submission of the appeal, and the date that, absent an appeal, the decision maker's determination becomes final.

Sanctions

Sanctions will only be imposed after a determination of responsibility and will depend on the facts and circumstances of each particular situation, the frequency and severity of the offense, and any history of past misconduct. Sanctions may include penalties up to and including dismissal for students and dismissal from employment for employees. Refer to policy 1100 for a full list of sanctions.

The Vice President of Student Affairs is responsible for determining appropriate sanctions for student respondents and providing the written rationale for any sanctions imposed. In determining the sanction, the Vice President of Student Affairs may elect to consult with the decision maker and/or IC/TIX.

The Provost is responsible for determining the appropriate sanctions for instructional and adjunct faculty respondents in the Division of Academic Affairs and writing the rationale for any sanctions imposed. In determining the sanction, the Provost may elect to consult with the decision maker and/or the Office of Human Resources.

Sanctions for AP faculty respondents and the written rationale for the sanctions, will be determined by the vice president of the division in which the AP faculty member respondent is employed. In determining the sanction, the vice president may elect to consult with the decision maker and/or the Office of Human Resources.

Sanctions for classified and wage staff respondents and the written rationale for the sanctions will be determined by the vice president of the division in which the classified or wage staff respondent is employed. In determining the sanction, the vice president may elect to consult with the decision maker and/or the Office of Human Resources.

IC/TIX and the Office of Human Resources, as applicable, will assist with overseeing the administration of sanctions.

Remedies

Remedies may be provided in addition to any sanctions as determined by the decision maker that are designed to preserve or restore equal access to the university's education programs and activities, including employment, for the complainant. The Title IX Coordinator or Deputy Title IX Coordinator oversees effective implementation of remedies.

Appeals

These appeal procedures apply only to appeals of the decision maker's determination and not to the decision of the Title IX Coordinator or Deputy Title IX Coordinator to dismiss a formal complaint.

Once the Notice of Outcome with access to the decision makers report has been provided, both parties have seven (7) business days from the date notice is received into the party's email account to file an appeal.

An appeal of the determination of the decision maker is available only based on one or more of the following grounds:

- Procedural irregularity that affected the outcome of the matter; and/or
- New evidence that was not reasonably available at the time the determination regarding responsibility was made, that could affect the outcome of the matter; and/or
- The Title IX Coordinator or Deputy Title IX Coordinator, investigator(s), and/or decision maker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

A request for an appeal must be submitted in writing to IC/TIX by the deadline stated in the notice of outcome and must set forth the grounds upon which the appeal is based and the evidence supporting the appeal.

If a party files a timely appeal, IC/TIX will promptly notify the other party in writing and provide a copy of the appeal. The non-appealing party may, but is not required to, submit a written response to IC/TIX regarding the appeal within five (5) business days from receipt of the copy of the appeal. At the expiration of the deadline for the non-appealing party's written response, IC/TIX will confirm that the appeal and written response, if any, is timely and shall forward it and any written response to the appeal officer, within five (5) business days of receipt. If an extension beyond five (5) business days is necessary, all parties will be notified in writing of the expected time frame. The appeal officer is a trained and qualified individual, who has not had any previous involvement with the formal complaint. CNU generally utilizes appeal officers who are external to the university. IC/TIX is responsible for appointing an appeal officer.

If adequate grounds for appeal have been stated, the appeal officer will consider the merits of the appeal. In considering the merits of the appeal, the appeal officer may review any pertinent materials in the record and meet with the parties and witnesses as needed (meetings may be conducted over the phone or using video conferencing technology). Any information included in the appeal that does not support one of the permissible grounds for appeal will not be considered in the appeal process.

The decision of the appeal officer is final. The decision and the rationale for the decision will be provided in writing to IC/TIX who will then make it available to both parties via a secure electronic platform within five (5) business days of having received the decision from the appeal officer.

The appeal officer will make every effort to complete their work within twenty (20) business days of having received the appeal. However, depending on the volume of information the appeal officer must review in order to determine an outcome, it may take longer. If an extension beyond twenty (20) business days is necessary, all parties will be notified in writing of the extension.

If an appeal is not filed within the appeal period, the determination of the hearing decision maker becomes final and is not subject to further review. Any sanctions imposed as a result of the hearing are stayed during the appeal process.

Informal Resolution Process

Informal resolution may be utilized instead of the formal complaint investigation and hearing process to address the harm between parties that is detailed in a policy 1100 sexual misconduct formal complaint. Informal resolution is designed to meet the needs of the individual who experienced harm by working to prevent its recurrence and to remedy its effects while maintaining the safety of the overall campus community. Informal resolution is a voluntary, structured intentional process that provides an opportunity for the parties involved to acknowledge the harm that was created, recognize needs that may be associated with the harm, and fulfill outcomes to address those needs.

- Complainants and Respondents may have an advisor of choice present with them at any meetings for the informal resolution process. Refer to the introduction of this document for more information on an advisor's role in the informal resolution process.
- Refer to policy 1100 for circumstances and conditions in which informal resolution is not available for resolving a sexual misconduct formal complaint.
- Informal resolution is non-disciplinary and generally will not result in a disciplinary record with CNU, unless a party does not fulfill requirements in a signed written formal agreement.
- Information shared during informal resolution is not made available by the informal resolution facilitator for any formal complaint investigation and hearing procedures, should such procedures be initiated or resumed.
- Agreeing to participate in, participating in, and/or the signing of a written formal agreement in the informal resolution process should in no way be construed as an acceptance of responsibility for a violation of policy 1100.

Informal Resolution Phase 1: Exploration of Informal Resolution

After IC/TIX has issued written notice of allegation of formal complaint which will include introduction of the designated facilitator, or the office has issued a notice of pause of formal complaint investigation and hearing process for exploration of informal resolution by the parties, the facilitator will reach out to the complainant and respondent separately, to schedule a time to meet with each party separately for an exploratory meeting.

Informal Resolution Facilitator Role and Responsibilities

The Informal resolution facilitators serve in a fair, impartial, and unbiased manner. The facilitator avoids judgement of facts at issue, and works cooperatively with both the complainant and respondent to identify and reach outcomes that both the complainant and respondent voluntarily and mutually agree to. Informal resolution facilitators do not compel parties to participate in the process or in any way discourage use of the formal complaint investigation and hearing process for reaching an outcome in a formal complaint. Informal resolution facilitators treat informal resolution confidentially and maintain their own records that are not in any way accessed by IC/TIX. Facilitators only share with IC/TIX any information needed for the facilitator and IC/TIX to consult regarding the suitability of the complaint for informal resolution, needs the parties may have for supportive measures and resources through CNU, copies of the parties' voluntary written consent to participate, the names of participants, and in the event an outcome is reached, the signed written formal agreement. In circumstances where there is an elevated risk to community or individual safety and well-being (such as a threat to harm self or others) the facilitator will break confidentiality to report to the appropriate authorities.

The facilitator(s) will make reasonable efforts to communicate with all parties in the informal resolution process and may refer a formal complaint back to IC/TIX after multiple failed attempts to communicate with a party. If an informal resolution process is terminated by the facilitator, CNU, the complainant, or respondent, the complainant may pursue the formal complaint investigation and hearing process for the allegations, as applicable.

Exploratory Meeting

The purpose of the exploratory meeting is for the facilitator to explain the roles, features, available processes, and potential outcomes of the informal resolution process; gauge participant interest in the process; discuss communication preferences; and answer questions about the process. If the facilitator determines after these initial exploratory meetings that informal resolution is not a viable option for reaching an outcome in the formal complaint, if one of the parties does not, after repeated attempts by the facilitator to schedule a meeting, follow through on meeting with the facilitator for an initial exploratory meeting, or either party informs the facilitator in writing that they do not wish to participate in informal resolution, the facilitator will discontinue any subsequent exploration of informal resolution by informing IC/TIX. In such cases, IC/TIX will reach out to the complainant to gauge the complainant's interest in initiating or resuming the formal complaint investigation and hearing process. If the complainant indicates in writing an interest in initiating or resuming the formal complaint investigation and hearing process, the process will commence at the beginning with the notice of

allegation of formal complaint, or if there has been a pause, will resume at the stage that was in progress at the time of the pause.

If, after the separate exploratory meetings, both parties, separately and voluntarily agree to participate in the informal resolution process, then each party must separately and voluntarily provide to the facilitator their written consent to participate.

Informal Resolution Phase 2: Informal Resolution Meetings

Once the parties have submitted to the facilitator their written voluntary consent to participate, the facilitator will begin the informal resolution process. The most common mode of facilitation is individual meetings between the facilitator and the complainant and respondent separately to:

- Understand what happened from the individual's perspective and learn how each party has been impacted.
- Explore with parties who else may have been impacted by what happened.
- Discuss options that each party may be amenable to in order to address any harm that has occurred between the parties.
- Determine the best way to share information between parties that meets each party's need for distance and personal space while providing each party the opportunity to be fully engaged with the process in a manner that does not exacerbate harm.

During the facilitation period, parties may submit their perspectives in writing to the facilitator or share with the facilitator other supporting documents that the party deems relevant for the process. This information will be considered confidential and may only be shared with the other party if the facilitator gains the party's permission to do so. Additionally, such documents and information will be retained by the facilitator in a secure file and only shared in a secure format with parties.

During the process, the facilitator may request participation by other individuals who have been identified by the parties or the facilitator as being potential participants. The facilitator has full discretion regarding who, beyond the complainant and respondent and their respective advisor of choice, may participate in the process and has the right to deny participation by any party. Further, the facilitator and CNU have no mechanism to compel anyone to participate in the process.

Though the facilitation process may take several weeks, the facilitator is responsible for making sure that the parties are actively engaged in the process and that the process is moving forward toward resolution. If the facilitator deems that the parties are not engaged and/or the process is not moving toward any sort of mutually agreeable outcomes, the facilitator may elect to discontinue the process, inform the parties that the process is being discontinued, and send it back to IC/TIX for initiation or resumption of the formal complaint investigation and hearing process.

Alternatively, at any time during the facilitation phase the complainant and/or respondent may voluntarily elect to discontinue the process by informing the facilitator in writing that they are discontinuing the process. In such cases, the facilitator will inform IC/TIX who will reach out regarding initiating or resuming the formal complaint investigation and hearing process.

Informal Resolution Rules of Decorum

The informal resolution process may be stressful and emotional at times for the participants involved. As such, all participants must agree to the terms of the process and adhere to the following expectations, outlined here. If a participant refuses to agree to the following expectations, they may not be permitted to participate in the process.

Complainants, respondents, advisors of choice, and all participants in the informal resolution process must:

- Listen respectfully to the individual speaking without interruption including distracting gestures and utterances such as rolling of eyes, scoffing, speaking under the breath, throwing arms in the air, etc.
- Avoid yelling, shouting, and speaking over the facilitator.
- Use respectful language that is not demeaning, derogatory, or disrespectful.
- Actively engage in the process by responding to inquiries from the facilitator in a timely manner.
- Direct questions about the Rules of Decorum or procedures directly to the facilitator or IC/TIX.

Violation of Expectations

Determination regarding a participant's violation of one of these rules of decorum lies with the facilitator(s). If a participant violates an expectation of the rules of decorum, the facilitator(s) will issue a verbal warning, identifying the expectation violated and how it was violated.

Should a participant continue to violate these expectations, the facilitator(s) will immediately call for a break. During the break, the facilitator(s) will address the behavior directly. If the participant refuses to comply with the facilitator(s) warning or causes additional problems, the facilitator(s) may decide to take one or more of the following actions:

- Remove the participant from the informal resolution facilitation.
- End the informal resolution facilitation and potentially reconvene at a later date, at the discretion of the facilitator in consultation with IC/TIX, if the removed participant is the complainant or respondent.

Informal Resolution Phase 3: Formal Agreement and Completion of Process

After perspectives, impacts, harms, and needs are shared during the facilitation process, mutually agreed upon outcomes and obligations are identified that become the basis for a written formal agreement. The process of creating outcomes to be contained in a written formal agreement is collaborative. All participants are encouraged to share and contribute to the outcomes in a written formal agreement. To repair the stated harms and needs agreed upon by all parties, the written formal agreement will include outcomes for the respondent to complete and may also include action items for the complainant.

The resolution reached including the outcomes and any action items will be developed into the written formal agreement. For the written formal agreement to take effect, the complainant, the respondent, and the facilitator must sign it. After the written formal agreement is signed, the outcomes the respondent has agreed to carry out become obligations that the respondent is expected to fulfill and complete and the formal complaint is considered resolved.

In determining outcomes for the respondent and action items for the complainant, the facilitator has full authority and discretion to consult with appropriate CNU administrators during that phase. CNU administrators that the facilitator may consult with include, but are not limited to, Student Affairs administrators, the Title IX Coordinator, and the Deputy Title IX Coordinator. Ultimately the parties and the facilitator determine collaboratively what outcomes and action items will emerge from the process.

Possible Outcomes

Outcomes, obligations, and action items may vary according to the circumstances of the formal complaint as well as the preferences of the complainant and respondent and may include, but are not limited to:

- Letters of apology
- Voluntary mutual or one-way agreed upon restrictions on contact
- Voluntary agreement to discontinue involvement in a club or organization for a set period of time
- Voluntary agreement to limit use of certain facilities on campus for a set period of time
- Voluntary agreement to independently seek counseling or other intervention and treatment
- Voluntary independent pursuit of training and education opportunities

Since this is a voluntary, non-disciplinary process that involves two parties coming to a mutually acceptable agreement, any outcomes, obligations, and or/action items must be measures that are within the control of the individual participants and not penalties imposed by CNU such as suspension, dismissal, involuntary separation from employment, university imposed training and education, fees or fines to be paid to the university, counseling or treatment imposed by the university, the requirement that the university create a new major or academic requirement, university initiated removal of financial aid, salary, or other benefits, or that the university create new positions or job descriptions.

Failure to fulfill Obligations and Outcomes

If a party fails to complete the obligations that they are responsible for fulfilling in the written formal agreement, CNU may refer the party to the appropriate university authority for failure to comply. If the party is found responsible for failure to comply, then such a finding will be part of the party's disciplinary record.