

# I.1 Grievance Procedures for Formal Complaints of Section I Title IX Prohibited Conduct

For purposes of addressing formal complaints of Section I Title IX Prohibited Conduct, the College will comply with the grievance procedures of this provision (I.2). The College's grievance procedures in this Section I (I.2) treat complainants and respondents equitably by providing remedies to a complainant where a determination of responsibility for Section I Title IX Prohibited Conduct has been made against the respondent, and by following a grievance process that complies with this Section I (I.2) before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent.<sup>[1]</sup> Remedies are designed to restore or preserve equal access to the College's education program or activity.<sup>[2]</sup>

## *Basic Requirements for Grievance Procedures*

Grievance proceedings shall be conducted by officials who receive annual training on the issues related to quid pro quo, sexual harassment, domestic violence, dating violence, sexual assault, and stalking, and how to conduct an investigation and hearing process that protects the safety of complainants and promotes accountability.<sup>[3]</sup> Proceedings shall provide a prompt, fair, and impartial investigation and resolution.<sup>[4]</sup>

The College's grievance procedures shall use an objective evaluation of all relevant evidence, including both inculpatory and exculpatory evidence.<sup>[5]</sup> During the grievance process, credibility determinations may not be based on a person's status as a complainant, respondent, or witness.<sup>[6]</sup>

Any individual designated by the College who is to be involved in the College's grievance procedures, such as a coordinator, investigator, or decision-maker, shall not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.<sup>[7]</sup> It is presumed that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.<sup>[8]</sup>

The College's grievance procedure includes reasonably prompt time frames for the conclusion of the grievance process. This includes filing and resolving appeals and informal resolution processes, and a process that allows for the temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the complainant and the respondent for such delay or extension and the reasons for the action.<sup>[9]</sup> "Good cause" may include considerations such as the absence of a party, a party's advisor, or a witness, concurrent law enforcement activity, or the need for language assistance or accommodation of disabilities.<sup>[10]</sup>

The College's grievance procedures describe the range of possible sanctions and remedies that the College may implement following any determination of responsibility, as outlined in Appendix B.<sup>[11]</sup>

The standard of proof under this Policy is preponderance of the evidence. This standard of evidence is applied for formal complaints against students as well as formal complaints against employees.<sup>[12]</sup> It shall be applied to all formal complaints of prohibited conduct under this Policy.<sup>[13]</sup>

## Notice of Allegations

Upon receipt of a formal complaint from a student or employee or upon the initiation of a formal complaint by the Title IX Coordinator on behalf of the College, the College must provide the following written notice to the parties who are known: notice of the College's grievance procedures, including any informal resolution process, and notice of the allegations potentially constituting Section I Title IX Prohibited Conduct, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident if known, the conduct allegedly constituting prohibited conduct under this Section I, and the date and location of the alleged incident, if known.<sup>[14]</sup>

The College's written notice must also include a statement that the respondent is presumed not responsible for the alleged conduct and that the determination regarding responsibility is made at the conclusion of the grievance process.<sup>[15]</sup>

The written notice must inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney and may inspect and review evidence. In accordance with the College's Code of Conduct, the College prohibits the parties from making false statements or knowingly submitting false information during the grievance process.<sup>[16]</sup>

If, in the course of the investigation, the College decides to investigate allegations about the complainant or respondent that are not included in the notice requirements above, then the College will provide notice of the additional allegations to the parties whose identities are known.<sup>[17]</sup>

## Investigations of a Formal Complaint

The College must investigate the allegations in a formal complaint.<sup>[18]</sup> If the conduct alleged in the formal complaint would not constitute Section I Title IX Prohibited Conduct even if proved, did not occur in the College's education program or activity, or did not occur against a person in the United States, then the College must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under Title IX.<sup>[19]</sup> However, such a dismissal does not preclude action under the College's Section II - Sexual Misconduct policy.<sup>[20]</sup> Policy and procedures as to an action under the College's Section II - Sexual Misconduct policy are described hereafter in Section II.

When an initial assessment or investigation under this policy identifies additional related possible violations of the College's Sexual Misconduct policy by the same party(ies), the grievance process set forth in this Title IX Prohibited Conduct policy and procedures will apply to all allegations. Under such circumstances, the parties will be provided with written notice containing the following information: (a) the alleged prohibited conduct, and (b) the Section(s) of this Policy under which alleged prohibited conduct falls.

When an initial assessment or investigation under this policy identifies additional related possible violations of College policies (other than Section II of this Policy) by the same party(ies) that would normally be handled by another responsible office (including but not limited to, the Office of Student Life, Office of the Provost, and Office of Human Resources), the Title IX Coordinator, with the approval of that responsible office, may:

- direct the grievance process set forth in this Section I (1.2) will apply to all allegations (using the standard of evidence that is applicable to each particular alleged policy violation). Under such circumstances, the parties will be provided written notice containing the following information: (a) the alleged prohibited conduct, and (b) the policy(ies) under which the alleged prohibited conduct falls; or alternatively,
- the Title IX Coordinator, with the approval of the responsible office, may direct investigators under Section I to investigate such other possible violations at the same time that they investigate allegations covered by this Section,

after which the responsible office will adjudicate the matter. Under such circumstances, the records from the investigation of the non-Title IX matter shall be provided to the office responsible for adjudicating that non-Title IX matter in accordance with applicable College policies and procedures.

As soon after the initiation of the investigation as possible, the Title IX Coordinator or the designated investigator shall notify all College employees or students who are believed to have documentary, electronic, or tangible evidence to preserve such evidence for the investigation.<sup>[21]</sup> The College must also notify the complainant of (a) the importance of preserving evidence as may be necessary to the proof of criminal domestic violence, dating violence, sexual assault, or stalking, or in obtaining a protection order, (b) the agencies to whom the alleged offense should be reported, (c) options regarding law enforcement and campus authorities, including notification of the complainant's option to (i) notify proper law enforcement authorities, including on-campus safety authorities and local police, (ii) be assisted by campus authorities in notifying law enforcement authorities if the complainant so chooses, and (iii) decline to notify such authorities.<sup>[22]</sup>

When investigating a formal complaint, the College must ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the College and not on the parties, provided that the College cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the College obtains that party's voluntary, written consent to do.<sup>[23]</sup>

The College must provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the College does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source so that each party can meaningfully respond to the evidence prior to the conclusion of the investigation.<sup>[24]</sup>

The College must also provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.<sup>[25]</sup> In addition, the College may not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.<sup>[26]</sup>

The College must provide the parties with the same opportunities to have present or be accompanied by the advisor of their choice to any grievance proceeding or related meeting.<sup>[27]</sup> The College may not limit the choice of advisor or presence of advisor for either the complainant or respondent in any meeting or grievance proceeding.<sup>[28]</sup> Advisors are not required to be attorneys.<sup>[29]</sup> Additionally, the College may not limit the choice or presence of an advisor for either the complainant or respondent in any meeting or grievance proceeding.<sup>[30]</sup> The College may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties.<sup>[31]</sup>

The College must provide to the party whose participation is invited or expected written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings with a party, with sufficient time for the party to prepare to participate.<sup>[32]</sup>

## *Investigative Report*

The College is required to create a preliminary investigative report that fairly summarizes relevant evidence.<sup>[33]</sup> Prior to completion of the final investigative report, the College must send each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format, or a hard copy, and the parties must have at least 10 days to

submit a written response, which the investigator will consider prior to completion of the final investigative report.<sup>[34]</sup> The College must then provide a copy of the final investigative report at least 10 days prior to a hearing or other time of determination regarding responsibility and send to each party and the party's advisor, if any, the final investigative report in an electronic format or a hard copy, for their review and written response.<sup>[35]</sup>

## Live Hearing

The College shall, as required under Title IX, conduct a live hearing, either in-person or virtually.<sup>[36]</sup>

During a live hearing, the College and the College's decision-maker(s) must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.<sup>[37]</sup> Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the parties' advisor of choice, notwithstanding the discretion of the College to otherwise restrict the extent to which advisors may participate in the proceedings, however, a party may never personally conduct a cross-examination.<sup>[38]</sup> If a party does not have an advisor present at the live hearing, the College will provide without fee or charge to that party, an advisor of the College's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party.<sup>[39]</sup>

The College must also make all evidence subject to the parties' inspection and review, available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examinations.<sup>[40]</sup>

Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.<sup>[41]</sup> 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.<sup>[42]</sup>

If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness' absence from the live hearing or refusal to answer cross-examination or other questions.<sup>[43]</sup>

Live hearings may be conducted with all parties physically present in the same geographic location or, at the College's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.<sup>[44]</sup> Colleges must create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review.<sup>[45]</sup> At the request of either party, the College must provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party or the witness answering questions.<sup>[46]</sup>

---

[1] 34 CFR §106.45(b)(1)(i).

[2] 34 CFR §106.45(b)(1)(i).

[3] 34 CFR §668.46(k)(2)(ii).

- [4] 34 CFR §668.46(k)(2)(i).
- [5] 34 CFR §106.45(b)(1)(ii).
- [6] 34 CFR §106.45(b)(1)(ii).
- [7] 34 CFR §106.45(b)(1)(iii).
- [8] 34 CFR §106.45(b)(1)(iv).
- [9] 34 CFR §106.45(b)(1)(v).
- [10] 34 CFR §106.45(b)(1)(v).
- [11] 34 CFR §106.45(b)(1)(vi).
- [12] 34 CFR §106.45(b)(1)(vii).
- [13] 34 CFR §106.45(b)(1)(vii).
- [14] 34 CFR §106.45(b)(2)(i)(A)-(B)
- [15] 34 CFR §106.45(b)(2)(i)(B).
- [16] 34 CFR §106.45(b)(2)(i)(B); *see also* Section 11 - Fraud, Georgetown College Code of Student Conduct,
- [17] 34 CFR §106.45(b)(2)(ii).
- [18] 34 CFR §106.45(b)(3)(i).
- [19] 34 CFR §106.45(b)(3)(i).
- [20] 34 CFR §106.45(b)(3)(i)
- [21] 34 CFR §668.46((b)11)(ii)(A)
- [22] 34 CFR §668.46((b)11)(ii)(A)
- [23] 34 CFR §106.45(b)(5)(i).
- [24] 34 CFR §106.45(b)(5)(vi)
- [25] 34 CFR §106.45(b)(5)(ii)
- [26] 34 CFR §106.45(b)(5)(iii)
- [27] 34 CFR §106.45(b)(5)(iv)
- [28] 34 CFR §106.45(b)(5)(iv)
- [29] 34 CFR §105.45(b)(5)(iv)
- [30] 34 CFR §106.45(b)(5)(iv)
- [31] 34 CFR §106.45(b)(5)(iv)
- [32] 34 CFR §106.45(b)(5)(v).

[33] 34 CFR §106.45(b)(5)(vii).

[34] 34 CFR §106.45(b)(5)(vi).

[35] 34 CFR §106.45(b)(5)(vii).

[36] 34 CFR §106.45(b)(6)(i).

[37] 34 CFR §106.45(b)(6)(i).

[38] 34 CFR §106.45(b)(6)(i).

[39] 34 CFR §106.45(b)(6)(i).

[40] 34 CFR §106.45(b)(5)(vi).

[41] 34 CFR §106.45(b)(6)(i).

[42] 34 CFR §106.45(b)(6)(i).

[43] 34 CFR §106.45(b)(6)(i).

[44] 34 CFR §106.45(b)(6)(i)

[45] 34 CFR §106.45(b)(6)(i).

[46] 34 CFR §106.45(b)(6)(i).