



**Seattle University**  
**Policy for Complying with the Title IX Regulations/Title IX Final Rule**  
**Regarding Formal Complaints of Sexual Harassment**  
**Effective: August 14, 2020**

**1. Introduction**

**Purpose of the Policy for Complying with the Title IX Regulations/Title IX Final Rule**

Title IX of the Educational Amendments of 1972 prohibits any person in the United States from being discriminated against on the basis of sex in seeking access to any educational program or activity receiving federal financial assistance. The U.S. Department of Education, which enforces Title IX, has interpreted Title IX's prohibition on sex discrimination to prohibit various forms of sexual harassment and sexual violence that interfere with a student's ability to access educational programs and opportunities.

On May 19, 2020, the U.S. Department of Education issued a Final Rule under Title IX of the Education Amendments of 1972. The Final Rule is effective August 14, 2020. The Final Rule:

- Defines the meaning of "sexual harassment" (including forms of sex-based violence)
- Addresses how Seattle University **must** respond to reports of misconduct falling within that definition of sexual harassment, and
- Mandates a grievance process that Seattle University **must** follow to comply with the law in these specific covered cases before issuing a disciplinary sanction against a person accused of sexual harassment.

The full text of the Final Rule and its extensive Preamble are available here:

<http://bit.ly/TitleIXReg>

Based on the Final Rule, Seattle University will implement this Policy for Complying with the Title IX Regulations/Title IX Final Rule, effective August 14, 2020.

## **Impact of Policy for Complying with the Title IX Regulations/Title IX Final Rule on Other Campus Disciplinary Policies**

In recent years, “Title IX” cases have become a short-hand for any campus disciplinary process involving sex discrimination, including those arising from sexual harassment and sexual assault. But under the Final Rule, Seattle University must narrow both the geographic scope of its authority to act under Title IX and the types of “sexual harassment” that it must subject to its Title IX investigation and adjudication process.

- Only incidents falling within the Final Rule’s definition of sexual harassment and jurisdictional requirements will be investigated and, if appropriate, brought to a live hearing through the Policy for Complying with the Title IX Regulations/Title IX Final Rule defined below.
- Seattle University remains committed to addressing any violations of its policies, even those not falling within the Title IX Final Rule.

Specifically, Seattle University’s **Code of Student Conduct**, which applies to all students, defines certain behavior as a violation of campus policy, and its [Sexual Offenses, Domestic Violence, Dating Violence and Stalking Policy](#) addresses the types of sex-based offenses constituting a violation of campus policy, and outlines the procedures for investigating and resolving those sex-based violations.

Seattle University’s [Human Resources Policy Manual](#) includes an appendix, which applies to all employees, that defines and prohibits sexual harassment and misconduct, and outlines the procedures for investigating and resolving those violations.

To the extent that alleged misconduct falls outside the Policy for Complying with the Title IX Regulations/Title IX Final Rule, or to the extent that misconduct falling outside the Policy for Complying with the Title IX Regulations/Title IX Final Rule is discovered in the course of investigating covered Title IX misconduct, Seattle University retains authority to investigate and resolve the allegations under the policies and procedures defined within the **Sexual Offenses, Domestic Violence, Dating Violence and Stalking Policy** or the **Human Resources Policy**, or other applicable university policies.

The elements established in the Policy for Complying with the Title IX Regulations/Title IX Final Rule have no effect and are not transferable to any other policy for any violation of the Code of Student Conduct, employment policies, or any civil rights violation except as narrowly defined in this Policy. This Policy does not set a precedent for other policies or processes of the university and may not be cited for or against any right or aspect of any other policy or process.

## **2. Policy for Complying with the Title IX Regulations/Title IX Final Rule: General Rules of Application; Definitions; Reporting; Non-Investigative Measures**

### **General Rules of Application**

#### **Effective Date**

The Policy for Complying with the Title IX Regulations/Title IX Final Rule will become effective on August 14, 2020, and will only apply to sexual harassment alleged to have occurred on or after August 14, 2020.

#### **Non-Discrimination in Application**

The requirements and protections of this policy apply equally regardless of sex, sexual orientation, gender identity, gender expression, or other protected classes covered by federal or state law or the university's non-discrimination policy. All requirements and protections are equitably provided to individuals regardless of such status or status as a Complainant, Respondent, or Witness. Individuals who wish to file a complaint about the institution's policy or process may contact the Department of Education's Office for Civil Rights using contact information available at <https://ocrcas.ed.gov/contact-ocr>.

### **Definitions**

#### **Covered Sexual Harassment**

For the purposes of this Policy, "covered sexual harassment" includes any conduct on the basis of sex that satisfies one or more of the following:

1. An employee conditioning educational benefits on participation in unwelcome sexual conduct (i.e., quid pro quo);
2. Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the educational institution's education program or activity;
3. Sexual assault (as defined in the Clery Act), which includes any sexual act directed against another person, without the consent of the victim/survivor including instances where the victim/survivor is incapable of giving consent;
4. Dating violence (as defined in the Violence Against Women Act (VAWA) amendments to the Clery Act), which includes any violence committed by a person: (A) who is or has been in a social relationship of a romantic or intimate nature with the victim/survivor; and (B) where the existence of such a relationship shall be determined based on a

consideration of the following factors: (i) The length of the relationship; (ii) The type of relationship; (iii) The frequency of interaction between the persons involved in the relationship.

5. Domestic violence (as defined in the VAWA amendments to the Clery Act), which includes any felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim/survivor, by a person with whom the victim/survivor shares a child in common, by a person who is cohabitating with or has cohabitated with the victim/survivor as a spouse or intimate partner, by a person similarly situated to a spouse of the victim/survivor under Washington's domestic or family violence laws or by any other person against an adult or youth victim/survivor who is protected from that person's acts under the domestic or family violence laws of Washington.
6. Stalking (as defined in the VAWA amendments to the Clery Act), meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to-- (A) fear for their safety or the safety of others; or (B) suffer substantial emotional distress.

Note that conduct that does not meet one or more of these criteria may still be prohibited under the Code of Student Conduct, the Sexual Offenses, Domestic Violence, Dating Violence and Stalking Policy, the Human Resources Policy, or other university policies.

## **Consent**

For the purposes of this Policy for Complying with the Title IX Regulations/Title IX Final Rule, "consent" means knowing, voluntary, and clear permission, through word or action, to engage in mutually agreed upon sexual activity or contact. Silence or lack of resistance alone does not constitute consent. Consent must be ongoing, and it may be withdrawn at any time. Consent to one form of sexual activity or contact does not imply consent to others, nor does past consent imply present or future consent. Consent to engage in sexual activity or contact with one person does not imply consent to engage in sexual activity or contact with another person.

Consent cannot result from the use of coercion, intimidation, force, or threats. Consent cannot be obtained from an individual who is incapable of giving consent because the person:

- Is under the legal age to give consent (16 years of age in Washington); or
- Has a mental, intellectual, or physical disability that renders them incapable of giving consent; or
- Is otherwise incapacitated (as defined below), including through the consumption of alcohol or drugs.

Incapacitation is a state in which an individual is unable to make informed, rational decisions because they lack the capacity to understand the “who, what, when, where, why or how” of a situation or interaction. Individuals cannot give consent if they cannot understand what is happening, or if they are disoriented, helpless, asleep, or unconscious for any reason. That applies even if alcohol or drugs were voluntarily consumed.

Individuals who engage in sexual activity or contact who know or should have known that the other party is incapacitated are engaging in sexual misconduct. Physical indicators of incapacitation may include slurred speech, unsteady gait or stumbling, impaired coordination, unfocused or bloodshot eyes, vomiting, unresponsiveness, or, outrageous or unusual behavior.

### **Education Program or Activity**

For the purposes of this Policy for Complying with the Title IX Regulations/Title IX Final Rule, Seattle University’s “education program or activity” includes:

- Any on-campus premises
- Any off-campus premises that Seattle University has substantial control over.
- Activity occurring within computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of Seattle University’s programs and activities over which the Seattle University has substantial control.

### **Formal Complaint**

For the purposes of this Policy for Complying with the Title IX Regulations/Title IX Final Rule, “formal complaint” means a document—including an electronic submission—filed by a complainant with a signature or other indication that the complainant is the person filing the formal complaint, or signed by the Assistant Vice President for Institutional Equity (“AVP for IE”)/Title IX Coordinator or designee, alleging sexual harassment against a respondent about conduct within Seattle University’s education program or activity and requesting initiation of the procedures consistent with this policy and its grievance procedures to investigate the allegation of sexual harassment.

### **Complainant**

For the purposes of this Policy for Complying with the Title IX Regulations/Title IX Final Rule, Complainant means any individual who has reported being or is alleged to be the victim/survivor of conduct that could constitute covered sexual harassment as defined under this policy.

## **Respondent**

For the purposes of this Policy for Complying with the Title IX Regulations/Title IX Final Rule, Respondent means any individual who has been reported to be the perpetrator of conduct that could constitute covered sexual harassment as defined under this policy.

## **Relevant evidence and questions**

“Relevant” evidence and questions refer to any questions and evidence that tends to make an allegation of sexual harassment more or less likely to be true.

“Relevant” evidence and questions do not include the following types of evidence and questions, which are deemed “irrelevant” at all stages of these grievance procedures:

- Evidence and questions about the complainant’s sexual predisposition or prior sexual behavior unless:
  - They are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or
  - They concern specific incidents of the complainant’s prior sexual behavior with respect to the respondent and are offered to prove consent.
- Evidence and questions that constitute, or seek disclosure of, information protected under a legally-recognized privilege, such as the attorney-client privilege.
- Any party’s medical, psychological, and similar records unless the party has given voluntary, written consent.

## **Making a Report Regarding Covered Sexual Harassment to the Institution**

Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim/survivor of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the AVP for IE/Title IX Coordinator, or by any other means that results in the AVP for IE/Title IX Coordinator receiving the person’s verbal or written report.

Contact Information for the AVP for IE/Title IX Coordinator:

<b>Name:</b>	Jill Moffitt
<b>Title:</b>	Assistant Vice President for Institutional Equity/Chief EEO Officer/Title IX Coordinator/ADA-504 Coordinator

**Office Address:** Office of Institutional Equity  
Loyola Hall 300  
901 12th Avenue  
Seattle, WA 98122-1090  
**Email Address:** [jmoffitt@seattleu.edu](mailto:jmoffitt@seattleu.edu)  
**Telephone Number:** 206-220-8515

Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address listed for the AVP for IE/Title IX Coordinator.

### **Confidential Reporting**

Officials in the following departments will provide privacy, but not confidentiality, upon receiving a report of conduct prohibited under this policy:

- Title IX Coordinator or designee: [oit@seattleu.edu](mailto:oit@seattleu.edu) or 206-296-2824 (Loyola 300)
- Associate Vice President/Dean of Students or designee: [deanofstudents@seattleu.edu](mailto:deanofstudents@seattleu.edu) or 206-296-6060 (Student Center 140)
- Department of Public Safety: [publicsafety@seattleu.edu](mailto:publicsafety@seattleu.edu) or 206-296-5911 (Columbia Building 002)
- Office of Human Resources [hr@seattleu.edu](mailto:hr@seattleu.edu) or 206-296-5870 (Rianna 200)

Officials in the following departments may provide confidentiality:

- Counseling & Psychological Services
- Student Health Center
- Campus Ministry & Clergy

### **Non-Investigatory Measures Available Under This Policy**

#### **Supportive Measures**

Complainants (as defined above), who report allegations that could constitute covered sexual harassment under this policy, have the right to receive supportive measures from Seattle University regardless of whether they desire to file a complaint. Supportive measures are non-disciplinary and non-punitive.

Possible supportive measures may include, but not be limited to:

- Supportive counseling through Counseling and Psychological Services (CAPS) or referrals to off-campus counseling providers;
- Pastoral counseling through Campus Ministry;
- Information about confidential, off-campus support (e.g. hotlines, resource centers, support groups);

- Extensions of deadlines, excused absences, or other course-related adjustments;
- Modifications of on-campus work or class schedules;
- Safe transportation options;
- No communication/contact orders;
- Work or housing accommodations;
- Information about confidential medical resources.

## **Emergency Removal**

Seattle University retains the authority to remove a respondent from Seattle University's program or activity on an emergency basis, where Seattle University: (1) undertakes an individualized safety and risk analysis; and (2) determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of covered sexual harassment justifies a removal.

## **Administrative Leave**

Seattle University retains the authority to place a non-student employee respondent on administrative leave during the Title IX Grievance Process, consistent with Human Resources Policy Manual and Faculty Handbook.

### **3. Policy for Complying with the Title IX Regulations/Title IX Final Rule: Grievance Process**

#### **Filing a Formal Complaint**

The timeframe for the grievance process under this policy begins with the filing of a Formal Complaint. The grievance process will be concluded within a reasonably prompt manner, and the university will endeavor to complete the process within one-hundred-twenty (120) days of the filing of the Formal Complaint, provided that the process may be extended for good reason, including but not limited to 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. The procedure for applying for extensions is described below.

To file a Formal Complaint, a complainant must provide the AVP for IE/Title IX Coordinator or designee a written, signed complaint describing the facts alleged. Complainants are only able to file a Formal Complaint under this policy if they are currently participating in, or attempting to participate in, the education programs or activities of Seattle University, including as an employee. For complainants who do not meet this criteria, the university will utilize existing university policies.



If a complainant does not wish to make a Formal Complaint, the AVP for IE/Title IX Coordinator may determine a Formal Complaint is necessary. Seattle University will inform the complainant of this decision in writing, and the complainant need not participate in the process further but will receive all notices issued under this policy and process.

Nothing in the Policy for Complying with the Title IX Regulations/Title IX Final Rule prevents a complainant from seeking the assistance of state or local law enforcement alongside the appropriate on-campus process.

### **Multi-Party Situations**

The university may consolidate Formal Complaints alleging covered sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of covered sexual harassment arise out of the same facts or circumstances.

### **Determining Jurisdiction**

The AVP for IE/Title IX Coordinator or designee will determine if this Policy for Complying with the Title IX Regulations/Title IX Final Rule should apply to a Formal Complaint.

The AVP for IE/Title IX Coordinator or designee will first confirm that the Formal Complaint was filed by a complainant currently participating in, or attempting to participate in, the education programs or activities of Seattle University, including as an employee.

The policy (and its grievance process) will apply when all of the following requirements are met, in the reasonable determination of the AVP for IE/Title IX Coordinator or designee:

1. The conduct is alleged to have occurred on or after August 14, 2020;
2. The conduct is alleged to have occurred in the United States;
3. The conduct is alleged to have occurred in Seattle University's education program or activity; and
4. The alleged conduct, if true, would constitute covered sexual harassment as defined in this policy.

If all of the elements are met, Seattle University will investigate the allegations according to the Policy for Complying with the Title IX Regulations/Title IX Final Rule.

If any one of these elements are not met, the AVP for IE/Title IX Coordinator or designee will notify the parties that the Formal Complaint is being dismissed for the purposes of the Policy for

Complying with the Title IX Regulations/Title IX Final Rule. Each party may appeal this dismissal using the procedure outlined in “Appeals,” below.

### **Allegations Potentially Falling Under Two Policies:**

If the alleged conduct, if true, includes conduct that would constitute covered sexual harassment and conduct that would not constitute covered sexual harassment, university may apply this Policy for Complying with the Title IX Regulations/Title IX Final rule to all such conduct or apply another university policy to conduct that falls outside this policy.

### **Discretionary Dismissal of a Complaint**

The AVP for IE/Title IX Coordinator or designee may dismiss a Formal Complaint brought under the Policy for Complying with the Title IX Regulations/Title IX Final Rule, or any specific allegations raised within that Formal Complaint, at any time during the investigation or hearing, if:

- A complainant notifies the AVP for IE/Title IX Coordinator or designee in writing that they would like to withdraw the Formal Complaint or any allegations raised in the Formal Complaint;
- The respondent is no longer enrolled at or employed by Seattle University; or,
- If specific circumstances prevent Seattle University from gathering evidence sufficient to reach a determination regarding the Formal Complaint or allegations within the Formal Complaint.

Any party may appeal a dismissal determination using the process set forth in “Appeals,” below.

### **Notice of Complaint Dismissal**

Upon reaching a decision that the Formal Complaint will be dismissed, the university will promptly send written notice of the dismissal of the Formal Complaint or any specific allegation within the Formal Complaint, and the reason for the dismissal, simultaneously to the parties through their institutional email accounts. It is the responsibility of parties to maintain and regularly check their email accounts.

### **Notice of Transfer**

Upon dismissal for the purposes of the Policy for Complying with the Title IX Regulations/Title IX Final Rule, Seattle University retains discretion to utilize the Code of Student Conduct; Sexual Offenses, Domestic Violence, Dating Violence and Stalking Policy; or other applicable policy to determine if a violation has occurred. If so, Seattle University will promptly send

written notice of the dismissal of the Formal Complaint under the Policy for Complying with the Title IX Regulations/Title IX Final Rule and will transfer the allegations to the alternative conduct process.

### **Grievance Process Timeframe**

The timeframe for the grievance process under this policy begins with the filing of a Formal Complaint. The grievance process will be concluded within a reasonably prompt manner, and the university will endeavor to complete the process within one-hundred-twenty (120) days of the filing of the Formal Complaint, provided that the process may be extended for good reason, including but not limited to 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. The procedure for applying for extensions is described below.

### **Notice of Allegations**

The AVP for IE/Title IX Coordinator or designee will provide the Notice of Allegations to any party to the allegations of sexual harassment. Such notice will occur as soon as practicable, after the institution receives a Formal Complaint of the allegations.

The parties will be notified by their institutional email accounts or other reasonable means.

The institution will provide sufficient time for the parties to review the Notice of Allegations and prepare a response before any initial interview.

The AVP for IE/Title IX Coordinator or designee may determine that the Formal Complaint must be dismissed on the mandatory grounds identified above, and will issue a Notice of Dismissal. If such a determination is made, any party to the allegations of sexual harassment identified in the Formal Complaint will receive the Notice of Dismissal in conjunction with, or in separate correspondence after, the Notice of Allegations.

### **Contents of Notice**

The Notice of Allegations will include the following:

- Notice of the institution's Policy for Complying with the Title IX Regulations/Title IX Final Rule and a hyperlink to a copy of the process.
- Notice of the allegations potentially constituting covered sexual harassment, and sufficient details known at the time the Notice is issued, such as the identities of the parties involved in the incident, if known, including the complainant; the conduct

allegedly constituting covered sexual harassment; and the date and location of the alleged incident, if known.

- A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
- A statement that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney, as required under 34 C.F.R. § 106.45(b)(5)(iv);
- A statement that before the conclusion of the investigation, the parties may inspect and review evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including the evidence upon which the institution does not intend to rely in reaching a determination regarding responsibility, and evidence that both tends to prove or disprove the allegations, whether obtained from a party or other source, as required under 34 C.F.R. § 106.45(b)(5)(vi);

### **Ongoing Notice**

If, in the course of an investigation, the university decides to investigate allegations about the complainant or respondent that are not included in the Notice of Allegations and are otherwise covered “sexual harassment” falling within the Policy for Complying with the Title IX Regulations/Title IX Final Rule, the university will notify the parties whose identities are known of the additional allegations by their institutional email accounts or other reasonable means.

The parties will be provided sufficient time to review the additional allegations to prepare a response before any initial interview regarding those additional charges.

### **Advisor of Choice and Participation of Advisor of Choice**

Seattle University will provide the parties equal access to advisors and support persons; any restrictions on advisor participation will be applied equally.

Seattle University has a long-standing practice of requiring students, faculty, and staff to participate in the process directly and not through an advocate or representative. Students participating as Complainant or Respondent in this process may be accompanied by an Advisor of Choice to any meeting or hearing to which they are required or are eligible to attend. The Advisor of Choice is not an advocate. Except where explicitly stated by this Policy, as consistent with the Final Rule, Advisors of Choice shall not participate directly in the process as per standard policy and practice of Seattle University.

Seattle University will not intentionally schedule meetings or hearings on dates where the Advisors of Choice for all parties are not available, provided that the Advisors act reasonably in providing available dates and work collegially to find dates and times that meet all schedules.

Seattle University's obligations to investigate and adjudicate in a prompt timeframe under Title IX and other policies apply to matters governed under this policy, and Seattle University cannot agree to extensive delays solely to accommodate the schedule of an Advisor. The determination of what is reasonable shall be made by the AVP for IE/Title IX Coordinator or designee. Seattle University will not be obligated to delay a meeting or hearing under this process more than five (5) days due to the unavailability of an Advisor of Choice, and may offer the party the opportunity to obtain a different Advisor of Choice or utilize a university-provided advisor.

### **Notice of Meetings and Interviews**

Seattle University will provide, to a 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.

### **Delays**

Each party may request a one-time delay in the process of up to five (5) days for good cause (granted or denied in the sole judgment of the AVP for IE/Title IX Coordinator or designee) provided that the requestor provides reasonable notice and the delay does not overly inconvenience other parties.

For example, a request to take a five-day pause made an hour before a hearing for which multiple parties and their advisors have prepared for shall generally not be granted, while a request for a five-day pause in the middle of investigation interviews to allow a party to obtain certain documentary evidence shall generally be granted.

The AVP for IE/Title IX Coordinator or designee shall have sole judgment to grant further pauses in the process.

### **Disability Accommodations**

This Policy does not alter any institutional obligations under federal disability laws including the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Parties may request reasonable accommodations for disclosed disabilities to the AVP for IE/Title IX Coordinator or designee at any point before or during the grievance/complaint process that do

not fundamentally alter the process. The AVP for IE/Title IX Coordinator or designee will not affirmatively provide disability accommodations that have not been specifically requested by a party, even where a party may be receiving accommodations in other institutional programs and activities.

## **Investigation**

### **General Rules of Investigations**

An investigator designated by the AVP for IE/Title IX Coordinator or designee will perform an investigation under a reasonably prompt timeframe of the conduct alleged to constitute covered sexual harassment after the issuing of the Notice of Allegations.

Seattle University and not the parties, has the burden of proof and the burden of gathering evidence, i.e. the responsibility of showing a violation of this policy has occurred. This burden does not rest with either party, and either party may decide not to share their account of what occurred or may decide not to participate in an investigation or hearing. This does not shift the burden of proof away from Seattle University and does not indicate responsibility.

Seattle University cannot access, consider, or disclose medical records without a waiver from the party (or parent, if applicable) to whom the records belong or of whom the records include information.

Seattle University will provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence, (i.e. evidence that tends to prove and disprove the allegations) as described below.

### **Inspection and Review of Evidence**

Prior to the completion of the investigation, after the parties have submitted all evidence they would like the investigator to consider, the parties will have an equal opportunity to inspect and review the evidence obtained through the investigation. The purpose of the inspection and review process is to allow each party the equal opportunity to meaningfully respond to the evidence prior to conclusion of the investigation.

Evidence that will be available for inspection and review by the parties will be any evidence that is directly related to the allegations raised in the Formal Complaint. It will include:

1. Any evidence that is relevant, even if that evidence does not end up being relied upon by the institution in making a determination regarding responsibility; and

2. Any inculpatory or exculpatory evidence (i.e. evidence that tends to prove or disprove the allegations) that is directly related to the allegations, whether obtained from a party or other source.

The university will provide the evidence in an electronic format. If it is impracticable to provide certain evidence in an electronic format, the institution will make the evidence available for review and inspection in person or other reasonable means. Although the university will often provide the evidence via email to the parties' institutional email addresses, the university is not under an obligation to use any specific process or technology to provide the evidence and shall have the sole discretion in terms of determining format and any restrictions or limitations on access.

The parties will have ten (10) calendar days to inspect and review the evidence and submit a written response by email to the investigator. The parties and their advisors may not photograph or otherwise copy the evidence. The investigator will consider the parties' written responses before completing the Investigative Report. The institution will provide copies of the parties' written responses to the investigator to all parties and their advisors, if any.

Any evidence subject to inspection and review will be available at any hearing, including for purposes of cross-examination.

### **Investigative Report**

The investigator will create an Investigative Report that fairly summarizes relevant evidence, and will provide that Report to the parties at least ten (10) calendar days prior the hearing in an electronic format for each party's review and written response.

The Investigative Report is not intended to catalog all evidence obtained by the investigator, but only to provide a fair summary of that evidence.

Only relevant evidence (including both inculpatory and exculpatory – i.e. tending to prove and disprove the allegations - relevant evidence) will be referenced in the Investigative Report.

The investigator may redact irrelevant information from the Investigative Report when that information is contained in documents or evidence that is/are otherwise relevant, or may include evidence not directly relating to the allegations as appendices to the report.

### **Hearing**

#### **General Rules of Hearings**

Seattle University will not issue a disciplinary sanction arising from an allegation of sexual harassment covered by the Policy for Complying with the Title IX Regulations/Title IX Final Rule without holding a live hearing.

The live hearing may be conducted with all parties physically present in the same geographic location, or, at the university's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually through a commercially reasonable video platform such as Zoom. This technology will enable participants simultaneously to see and hear each other. At its discretion, Seattle University may delay or adjourn a hearing based on technological errors not within a party's control.

All proceedings will be recorded through audio recording or audiovisual recording. The recording will be made available to the parties for inspection and review.

### **Continuances or Granting Extensions**

Seattle University may determine that multiple sessions or a continuance (i.e. a pause on the continuation of the hearing until a later date or time) is needed to complete a hearing. If so, Seattle University will notify all participants and endeavor to accommodate all participants' schedules and complete the hearing as promptly as practicable.

### **Participants in the live hearing**

Live hearings are not public, and the only individuals permitted to participate in the hearing are as follows:

#### *Complainant and Respondent (The Parties)*

- The parties cannot waive the right to a live hearing.
- In reaching a determination regarding responsibility, the decision-maker will consider prior statements made by a party regardless of whether that party submits to cross-examination, as described below. Additionally, the decision-maker may reach a determination regarding responsibility of a party based on evidence that does not constitute a "statement," by that party as part of their objective evaluation of all relevant evidence.
- Seattle University may still proceed with the live hearing in the absence of a party, and may reach a determination of responsibility in their absence, including through any evidence gathered that does not constitute a "statement" by that party.
  - For example, a verbal or written statement constituting part or all of the sexual harassment itself is not a "prior statement" that must be excluded if the maker of the statement does not submit to cross-examination about that statement. In other words, a prior statement would not include a document, audio recording, audiovisual reading,



and digital media, including but not limited to text messages, emails, and social media postings, that constitute the conduct alleged to have been the act of sexual harassment under the formal complaint.

- The decision-maker cannot draw an inference about the determination regarding responsibility based solely on a party's absence from the live hearing or refusal to answer cross examination or other questions.
- Seattle University will not threaten, coerce, intimidate or discriminate against the party in an attempt to secure the party's participation.

#### *Decision-makers*

- Decision-makers will not include anyone who has also served as the Title IX Coordinator, Title IX investigator, or advisor to any party in the same case, nor will a decision-maker at the hearing serve at the appeals level of the case.
- No decision-maker will have a conflict of interest or bias in favor of or against complainants or respondents generally, or in favor or against the parties to the particular case.
- Decision-makers will be trained on topics including how to serve impartially, issues of relevance, including how to apply the rape shield protections provided for complainants, and any technology to be used at the hearing.
- The parties will have an opportunity to raise any objections regarding a decision-maker's actual or perceived conflicts of interest or bias at the commencement of the live hearing.

#### *Advisor of choice*

- The parties have the right to select an advisor of their choice, who may be, but does not have to be, an attorney.
- The advisor of choice may accompany the parties to any meeting or hearing they are permitted to attend, but may not speak for the party, except for the purpose of cross-examination.
- The parties are not permitted to conduct cross-examination themselves; it must be conducted by their advisors. As a result, if a party does not select an advisor, the institution will select an advisor to serve in this role for the limited purpose of conducting cross-examination in a live hearing, at no fee or charge to the party.
- The advisor is not prohibited from having a conflict of interest or bias in favor of or against complainants or respondents generally, or in favor or against the parties to the particular case.
- If a party does not attend the live hearing, the party's advisor may appear and conduct cross-examination on their behalf.

#### *Witnesses*

- Witnesses cannot be compelled to participate in the live hearing, and have the right not to participate in the hearing free from retaliation.

- In reaching a determination regarding responsibility, the decision-maker must consider statements made by a witness, including statements relayed by the witness to another witness or a party who testifies at the live hearing, even if the witness does not submit to cross examination, as described below.

## **Hearing Procedures**

For all live hearings conducted under this Policy, the procedure will be as follows:

- Decision-makers will open and establish rules and expectations for the hearing;
- The Parties will each be given the opportunity to provide opening statements;
- Decision-makers will ask questions of the Parties and Witnesses;
- Parties will be given the opportunity for live cross-examination after decision-makers conducts initial questioning. During the Parties' cross-examination, decision-makers will have the authority to pause cross-examination at any time for the purposes of asking follow up questions, and any time necessary in order to enforce reasonable standards of decorum.
- Should a Party or the Party's Advisor choose not to cross-examine a Party or Witness, the Party shall affirmatively waive cross-examination through a written or oral statement to the decision-maker. A Party's waiver of cross-examination does not eliminate the ability of the decision-maker to use statements made by the Party.

## **Live Cross-Examination Procedure**

Each party's advisor will conduct live cross-examination of the other party or parties and witnesses. During this live-cross examination the advisor will ask the other party or parties and witnesses relevant questions and follow-up questions, including those challenging credibility directly, orally, and in real time.

Before any cross-examination question is answered, decision-makers will determine if the question is relevant. Cross-examination questions that are duplicative of those already asked, including by the decision-maker, may be deemed irrelevant if they have been asked and answered.

## **Review of Recording**

The recording of the hearing will be available for review by the parties within ten calendar days, unless there are any extenuating circumstances.

## **Determination Regarding Responsibility**

## **Standard of Proof**

Seattle University uses the preponderance of the evidence standard for investigations and determinations regarding responsibility of formal complaints covered under this Policy. This means that the investigation and hearing determines whether it is more likely than not that a violation of the Policy occurred.

## **General Considerations for Evaluating Testimony and Evidence**

While the opportunity for cross-examination is required in all Title IX hearings, determinations regarding responsibility may be based in part, or entirely, on documentary, audiovisual, and digital evidence, as warranted in the reasoned judgment of decision-makers.

Decision-makers shall not draw inferences regarding a party or witness's credibility based on the party or witness's status as a complainant, respondent, or witness, nor shall it base its judgments in stereotypes about how a party or witness would or should act under the circumstances.

Generally, credibility judgments should rest on the demeanor of the party or witness, the plausibility of their testimony, the consistency of their testimony, and its reliability in light of corroborating or conflicting testimony or evidence.

Still, credibility judgments should not rest on whether a party or witness's testimony is non-linear or incomplete, or if the party or witness is displaying stress or anxiety.

Decision makers will afford the highest weight relative to other testimony to first-hand testimony by parties and witnesses regarding their own memory of specific facts that occurred. Both inculpatory and exculpatory (i.e. tending to prove and disprove the allegations) evidence will be weighed in equal fashion.

Except where specifically barred by the Title IX Final Rule, a witness's testimony regarding third-party knowledge of the facts at issue will be allowed, but will generally be accorded lower weight than testimony regarding direct knowledge of specific facts that occurred.

The Final Rule requires that Seattle University allow parties to call "expert witnesses" for direct and cross examination. Seattle University does not provide for expert witnesses in other proceedings. While the expert witness will be allowed to testify and be crossed as required by the Final Rule, decision-makers will be instructed to afford lower weight to non-factual testimony of the expert relative to fact witnesses, and any expert testimony that is not directed to the specific facts that occurred in the case will be afforded lower weight relative to fact witnesses, regardless

of whether the expert witness testimony is the subject of cross examination and regardless of whether all parties present experts as witnesses.

The Final Rule requires that Seattle University allow parties to call character witnesses to testify. Seattle University does not provide for character witnesses in other proceedings. While the character witnesses will be allowed to testify and be crossed as required by the Final Rule, decision-makers will be instructed to afford very low weight to any non-factual character testimony of any witness.

The Final Rule requires that Seattle University admit and allow testimony regarding polygraph tests (“lie detector tests”) and other procedures that are outside of standard use in academic and non-academic conduct processes. Decision-makers will be instructed to afford lower weight to such processes relative to the testimony of fact witnesses.

Where a party or witness’s conduct or statements demonstrate that the party or witness is engaging in retaliatory conduct, including but not limited to witness tampering and intimidation, decision-makers may draw an adverse inference as to that party or witness’s credibility.

### **Components of the Determination Regarding Responsibility**

The written Determination Regarding Responsibility will be issued simultaneously to all parties through their institution email account, or other reasonable means. The Determination will include:

1. Identification of the allegations potentially constituting covered sexual harassment;
2. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
3. Findings of fact supporting the determination;
4. For each allegation:
  - a. A statement of, and rationale for, a determination regarding responsibility;
  - b. A statement of, and rationale for, any disciplinary sanctions the recipient imposes on the respondent; and
  - c. A statement of, and rationale for, whether remedies designed to restore or preserve equal access to the recipient’s education program or activity will be provided by the recipient to the complainant; and
5. The recipient’s procedures and the permitted reasons for the complainant and respondent to appeal (described below in “Appeal”).

### **Timeline of Determination Regarding Responsibility**

If there are no extenuating circumstances, the determination regarding responsibility will be issued by Seattle University within ten (10) business days of the completion of the hearing.

## **Finality**

The determination regarding responsibility becomes final either on the date that the institution provides the parties with the written determination of the result of the appeal, if an appeal is filed consistent with the procedures and timeline outlined in “Appeals” below, or if an appeal is not filed, the date on which the opportunity to appeal expires.

## **Appeals**

Each party may appeal (1) the dismissal of a formal complaint or any included allegations and/or (2) a determination regarding responsibility. To appeal, a party must submit their written appeal within five (5) business days of being notified of the decision, indicating the grounds for the appeal.

The limited grounds for appeal available are as follows:

- Procedural irregularity that affected the outcome of the matter (i.e. a failure to follow the institution’s own procedures);
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
- The AVP for IE/Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against an individual party, or for or against complainants or respondents in general, that affected the outcome of the matter.
- Substantially disproportionate sanctions.

The submission of appeal stays any sanctions for the pendency of an appeal. Supportive measures remain available during the pendency of the appeal.

If a party appeals, the university will, as soon as practicable, notify the other party in writing of the appeal; however, the time for appeal shall be offered equitably to all parties and shall not be extended for any party solely because the other party filed an appeal.

Appeals should be submitted in electronic form, following instructions in the written Determination Regarding Responsibility.

Appeals will be decided by an Appeals Officer, who will be free of conflict of interest and bias, and will not serve as investigator, Title IX Coordinator, or hearing decision-maker in the same matter.

The outcome of any appeal will be provided in writing simultaneously to both parties, and include rationale for the decision.

### **Retaliation**

Seattle University will keep the identity of any individual who has made a report or complaint of sex discrimination confidential, including the identity of any individual who has made a report or filed a Formal Complaint of sexual harassment under this Policy for Complying with the Title IX Regulations/Title IX Final Rule, any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, and any witness, except as permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding under this Title IX Grievance Policy.

No person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX of the Education Amendments of 1972 or its implementing regulations.

No person may intimidate, threaten, coerce, or discriminate against any individual because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding or hearing under this Policy for Complying with the Title IX Regulations/Title IX Final Rule.