

Title IX Grievance Process (Process A)

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For conduct that is determined to be a possible violation of Title IX, specific processes are followed based on federal regulations in order to provide for a prompt and equitable resolution of the complaint. This includes the investigation, a hearing, and an opportunity for an appeal. (Board Policy FFDA)

Once a sexual misconduct complaint is reported, the Title IX Coordinator evaluates the complaint to determine what policy, if any, has been violated based on the reported behavior. Based on this determination, the grievance procedures will differ and will follow either Process A (official Title IX grievance procedures) or Process B (Other Sexual Misconduct Complaints that do not meet the criteria of Title IX based on federal regulations).

- Process A (Title IX) — The behavior must meet the definition as outlined in federal regulations which includes behavior that is severe, pervasive, AND objectively offensive so that it effectively denies the student’s ability to participate in their educational program.

Process B (Other Sexual Misconduct Complaints) — The complaint involves sexual misconduct defined in policy as “Other Complaints” and may include sex discrimination and other inappropriate conduct or retaliation that does not meet the criteria as defined by the Title IX regulations. This would include those complaints that fall within the definition of Title VII.

This document describes the procedures for filing a formal Title IX complaint and the procedures to be followed (Process A).

Filing a Formal Complaint

After the report is received and determined to be a Title IX complaint, the Title IX Coordinator will notify the student of their rights and options including how to file a formal complaint and how to request support services or supportive measures. If the behavior is severe, possibly risking the safety of the College, the Title IX Coordinator may file the formal complaint.

Written Notice to Both Parties

The Title IX Coordinator will provide written notice to both the Complainant and the Respondent regarding the complaint with the following information:

- A description of the support services and supportive measures available to both parties
- A copy of the applicable policies and procedures
- A statement of the allegations with sufficient detail known at the time including the identity of those involved, the specific dates, times, and locations of the alleged conduct, and the alleged policy violations being investigated

- A statement that the Respondent is presumed not responsible and that a determination regarding responsibility will be made at the conclusion of the grievance process
- A statement regarding the parties' right to inspect and review the evidence gathered during the investigation
- A statement regarding the prohibition on knowingly making false statements during the grievance process

Use of an Advisor

For Title IX policy violations, both parties must be provided notice of their right to an advisor of their choice, who may be, but is not required to be, an attorney. The advisor should accompany the Respondent to any related meeting or grievance proceeding, may inspect and review evidence, and may receive the investigative report. Students must provide the name and contact information of their advisors, if any, to the Title IX Coordinator and state whether the advisor is authorized by the student to receive confidential information on behalf of the student. The College may also assist in assuring both parties have an advisor.

The parties may each have an advisor of their choice present with them for all meetings, interviews, and hearings within the resolution process, if they so choose. The parties may select whoever they wish to serve as their advisor as long as the advisor is eligible and available.

Choosing an advisor who is also a witness in the process creates potential for bias and conflict-of-interest. A party who chooses an advisor who is also a witness can anticipate that issues of potential bias will be explored by the hearing Decision-Maker(s).

Supportive Measures

Both the Complainant and the Respondent are entitled to request supportive measures designed to restore or preserve access to their educational program or activity while not burdening the other party. Examples of supportive measures include counseling, extensions of deadlines or other course-related adjustments, modification of work or class schedules and campus escort services. The Complainant and Respondent are allowed to drop a course shared with the other party without academic penalty.

Informal Resolution

After a formal complaint is filed, an informal resolution may be requested if both parties agree. For an informal resolution, both parties must provide voluntary, informed written consent. The College cannot require an informal agreement.

At any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint. Informal resolutions are not allowed with allegations involving an employee sexually harassing a student.

Process A – Investigation Process

Once the decision to commence a formal investigation is made, the Title IX Coordinator appoints Pool members to conduct the investigation (typically using a team of two investigators), usually within two (2) business days of determining that an investigation should proceed.

Ensuring Impartiality — Any individual materially involved in the administration of the resolution process (including the Title IX Coordinator, Investigator[s], and Decision-Maker[s]) may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent.

The college operates with the presumption that the Respondent is not responsible for the reported misconduct unless and until the Respondent is determined to be responsible for a policy violation by the applicable standard of proof. The standard of evidence for investigating and adjudicating a complaint is preponderance of the evidence. This standard shall be met if the evidence shows that the allegation is more likely than not to have occurred.

Details for the Investigation Process — All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all relevant parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary.

The Investigator(s) typically take the following steps, if not already completed (not necessarily in this order):

- Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and determining the order of interviews for all witnesses and the parties
- Meet with the Complainant to finalize their interview/statement, if necessary
- Work with the Title IX Coordinator, as necessary, to prepare the initial Notice of Investigation and Allegation (NOIA)
- Provide each interviewed party and witness an opportunity to review and verify the Investigator's summary notes (or transcript) of the relevant evidence/testimony from their respective interviews and meetings
- Make good faith efforts to notify the parties of any meeting or interview involving the other party, in advance when possible
- When participation of a party is expected, provide that party with written notice of the date, time, and location of the meeting, as well as the expected participants and purpose
- Interview all available, relevant witnesses and conduct follow-up interviews as necessary
- Allow each party the opportunity to suggest witnesses and questions they wish the Investigator(s) to ask of the other party and witnesses, and document in the report which questions were asked, with a rationale for any changes or omissions
- Provide regular status updates to the parties throughout the investigation
- Prior to the conclusion of the investigation, provide the parties and their respective advisors (if so desired by the parties) with a list of witnesses whose information will be used to render a finding

- Write a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence. Appendices including relevant physical or documentary evidence will be included. Both parties will have the opportunity to review the report and evidence obtained as part of the investigation.
- The Investigator will incorporate any relevant feedback, and the final report is then shared with all parties and their advisors through secure electronic transmission or hard copy
- For cases with concurrent criminal investigation, the College has the responsibility to continue with the formal complaint unless the College's investigation interferes with the criminal investigation. The need to delay is determined after consulting with law enforcement or the District Attorney.

Request to Not Investigate

The Complainant may request that the College not investigate the allegations, ask to keep the incident confidential, or request to withdraw the formal complaint. In such circumstances, the College will weigh the rights, interests, and safety of the larger campus community and base the decision on factors that include the seriousness of the behavior, if the Respondent has previous reports, and/or if there are risks of harm to others.

The Title IX Coordinator will promptly notify the Complainant of the decision to not investigate in writing. If the report is not investigated, the College will take steps necessary to protect the health and safety of the College regarding the incident. If the determination is made to proceed with the investigation, the Complainant is not required to participate. This decision is made on a case-by-case basis and both parties will be notified in writing if such a delay is necessary.

Process A – The Decision-Making Process / Live Hearing

Provided that the complaint is not resolved through Informal Resolution, once the final investigation report is shared with the parties, the Title IX Coordinator will refer the matter for a hearing.

Process A – Hearing Decision-Maker Composition

The Title IX Coordinator or designee will designate a three-member panel from the Title IX Team at the discretion of the Title IX Coordinator with one of the three members appointed as Chair. An alternate may sit in throughout the hearing process in the event that a substitute is needed for any reason. The Decision-Makers will not have had any previous involvement with the investigation. Those who have served as investigators will be witnesses.

The Title IX Coordinator may not serve as a Decision-Maker or Chair in the matter but may serve as an administrative facilitator of the hearing if their previous role(s) in the matter do not create a conflict of interest.

Under U.S. Department of Education regulations for Title IX, a form of indirect questioning is required during the hearing but must be conducted by the parties' advisors. The parties are not permitted to directly question each other or any witnesses.

If a party does not have an advisor for a hearing, the Title IX Coordinator or designee will appoint a trained advisor for the limited purpose of conducting any questioning of the other party and witnesses.

A party may reject this appointment and choose their own advisor, but they may not proceed without an advisor during a hearing. If the party's advisor will not conduct questioning, the Title IX Coordinator will appoint an advisor who will do so, regardless of the participation or non-participation of the advised party in the hearing itself. Extensive questioning of the parties and witnesses may also be conducted by the Decision-Maker(s) during the hearing.

Evidentiary Considerations in the Hearing

Any evidence that the Decision-Makers (panel) determine is relevant and credible may be considered. The hearing does not consider:

1. Incidents not directly related to the possible violation, unless they evidence a pattern;
2. Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, 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.

Within the boundaries stated above, the hearing can consider character evidence generally, if offered, but that evidence is unlikely to be relevant unless it is fact evidence or relates to a pattern of conduct.

Previous disciplinary action of any kind involving the Respondent may be considered in determining an appropriate sanction upon a determination of responsibility, assuming the College uses a progressive discipline system. This information is only considered at the sanction stage of the process and is not shared until then.

The parties may each submit a written impact statement prior to the hearing for the consideration of the Decision-Maker(s) at the sanction stage of the process when a determination of responsibility is reached.

Notice of Hearing

Prior to the hearing, the Title IX Coordinator or the Chair will send notice of the hearing to the parties. The notice will contain:

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable hearing procedures, and a statement of the potential sanctions/responsive actions that could result
- The time, date, and location of the hearing and a reminder that attendance is mandatory, superseding all other campus activities
- Any technology that will be used to facilitate the hearing
- A list of all those who will attend the hearing, along with an invitation to object to any Decision-Maker(s) on the basis of demonstrated bias or conflict of interest
- Information on how the hearing will be recorded and on access to the recording for the parties after the hearing

- A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence, and the party's or witness's testimony and any statements given prior to the hearing will not be considered by the Decision-Maker(s). For compelling reasons, the Chair may reschedule the hearing.
- Notification that the parties may have the assistance of an advisor of their choosing at the hearing and will be required to have one present for any questions they may desire to ask
- A copy of all the materials provided to the Decision-Makers about the matter, unless they have been provided already
- An invitation to each party to submit to the Chair an impact statement pre-hearing that the Decision- Makers will review during any sanction determination
- An invitation to contact the Title IX Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing
- Whether parties can/cannot bring mobile phones/devices into the hearing

Hearings for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to this policy) and are unable to be resolved prior to the end of term will typically be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeline followed by the College and remain within the 60-90 business day goal for resolution.

Alternative Hearing Participation Options

If a party or parties prefer not to attend or cannot attend the hearing in person, the party should request alternative arrangements from the Title IX Coordinator or the Chair. The Title IX Coordinator or the Chair can arrange to use technology to allow remote testimony without compromising the fairness of the hearing. Remote options may also be needed for witnesses who cannot appear in person.

Pre-Hearing Preparation

Prior to the Hearing the following will be provided:

- The Chair or hearing facilitator, after any necessary consultation with the parties, Investigator(s) and/or Title IX Coordinator, will provide the names of persons who will be participating in the hearing, all pertinent documentary evidence, and the final investigation report to the parties.
- Any witness scheduled to participate in the hearing must have been first interviewed by the Investigator(s) or have provided a written statement or answered written questions. The same holds for any evidence that is first offered at the hearing. If the parties and Chair do not agree to the admission of evidence newly offered at the hearing, the Chair may delay the hearing and instruct that the investigation needs to be re-opened to consider that evidence.
 - The parties will be given a list of the names of the Decision-Maker(s) at least five (5) business days in advance of the hearing. All objections to any Decision-Maker must be raised in writing, detailing the rationale for the objection, and must be submitted to the Title IX Coordinator as soon as possible and no later than two days prior to the hearing. Decision-Makers will only be removed if the Title IX

Coordinator concludes that their bias or conflict of interest precludes an impartial hearing of the allegation(s).

Pre-Hearing Meeting

The Chair may convene a pre-hearing meeting(s) with the parties and/or their advisors to invite them to submit the questions or topics they (the parties and/or their advisors) wish to ask or discuss at the hearing, so that the Chair can rule on their relevance ahead of time to avoid any improper evidentiary introduction in the hearing, or to provide recommendations for more appropriate phrasing.

However, this advance review opportunity does not preclude the advisors from asking a question for the first time at the hearing or from asking for a reconsideration based on any new information or testimony offered at the hearing. The Chair must document and share with each party their rationale for any exclusion or inclusion at a pre-hearing meeting.

The Chair, only with full agreement of the parties, can decide in advance of the hearing that certain witnesses do not need to be present if their testimony can be adequately summarized by the Investigator(s) in the investigation report or during the hearing.

At each pre-hearing meeting with a party and their advisor, the Chair will consider arguments that evidence identified in the final investigation report as relevant is, in fact, not relevant. Similarly, evidence identified as directly related but not relevant by the Investigator(s) may be argued to be relevant. The Chair may rule on these arguments pre-hearing and will exchange those rulings between the parties prior to the hearing to assist in preparation for the hearing. The Chair may consult with legal counsel and/or the Title IX Coordinator or ask either or both to attend pre-hearing meetings.

Hearing Procedures

At the hearing, the Decision-Makers have the authority to hear and make determinations on all allegations. Hearings (but not deliberations) are recorded by the College for purposes of review in the event of an appeal.

Participants at the hearing will include the Chair, the two additional panelists, the hearing facilitator, the Investigator(s) who conducted the investigation, the parties (or three (3) organizational representatives when an organization is the Respondent), advisors to the parties, any called witnesses, the Title IX Coordinator, and anyone providing authorized accommodations or assistive services.

The Chair will answer all questions of procedure. Anyone appearing at the hearing to provide information will respond to questions on their own behalf.

The Chair will allow witnesses who have relevant information to appear at a portion of the hearing in order to respond to specific questions from the Decision-Maker(s) and the parties, and the witnesses will then be excused.

The Order of the Hearing (Introductions and Explanation of Procedure)

The Chair explains the procedures and introduces the participants. This may include a final opportunity for challenge or recusal of the Decision-Maker(s) on the basis of bias or conflict of interest. The Chair will rule on any such challenge unless the Chair is the

individual who is the subject of the challenge, in which case the Title IX Coordinator will review and decide the challenge.

A non-voting hearing facilitator, appointed by the Title IX Investigator, will manage protocol which may include recording, witness logistics, party logistics, curation of documents, separation of the parties, and other administrative elements of the hearing process.

The hearing facilitator may attend to logistics of rooms for various parties/witnesses as they wait; flow of parties/witnesses in and out of the hearing space; ensuring recording and/or virtual conferencing technology is working as intended; copying and distributing materials to participants as appropriate, etc.

The following activities represent the order of the hearing.

1. The Investigator(s) will present a summary of the final investigation report, including items that are contested and those that are not, and will be subject to questioning by the Decision-Maker(s) and the parties (through their Advisors).
2. Once the Investigator(s) present their report and are questioned, the parties and witnesses may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the Chair. The parties/witnesses will submit to questioning by the Decision-Maker(s) and then by the parties through their Advisors ("cross-examination"). All questions are subject to a relevance determination by the Chair.
3. If a party or witness chooses not to submit to cross-examination at the hearing, either because they do not attend the meeting or they attend but refuse to participate in questioning, then the Decision-Maker(s) may not rely on any prior statement made by that party or witness at the hearing (including those contained in the investigation report) in the ultimate determination of responsibility. The Decision-Maker(s) must disregard their statement. Evidence provided that is something other than a statement by the party or witness may be considered.
4. The Decision-Makers will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the policy violation(s) in question. A simple majority vote of the panel is required to determine the finding. The preponderance of the evidence standard of proof is used.
 - When there is a finding of responsibility on one or more of the allegations, the Decision-Makers may then consider the previously submitted party impact statements and any pertinent conduct history to recommend the appropriate sanction(s).
 - Using the deliberation statement, the Title IX Coordinator will work with the Chair to prepare a Notice of Outcome letter and then share the letter, including the final determination, rationale, and any applicable sanction(s) with the parties and their Advisors.
 - Policy requires this determination be provided to the parties at the same time. If there is an appeal, the determination regarding responsibility becomes final on the date the College provides the parties with written documentation of the result of the appeal. With no appeal, the determination is final on the date on which the appeal would no longer be considered timely.
5. The Notice of Outcome will articulate the specific policy(ies) reported to have been violated, including the relevant policy section, and will contain a description of the procedural steps taken by the College from the receipt of the misconduct report to the determination, including any and all notifications to the parties, interviews with

parties and witnesses, site visits, methods used to obtain evidence, and hearings held. The Notice of Outcome will also include information on when the results are considered by the College to be final, any changes that occur prior to finalization, and the relevant procedures and bases for any available appeal options.

Potential Remedies and Sanction

Factors considered when determining a sanction/responsive action may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- Previous allegations or allegations involving similar conduct
- The need for sanctions/responsive actions to bring an end to the discrimination, harassment, and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment, and/or retaliation
- The need to remedy the effects of the discrimination, harassment, and/or retaliation on the Complainant and the community
- The impact on the parties

Any other information deemed relevant by the Decision-Maker(s)The sanctions will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.

The sanctions described in this policy are not exclusive of, and may be in addition to, other actions taken, or sanctions imposed by external authorities. The College will record or transcribe the live hearing and make it available to the parties for inspection and review.

Process A — Appeal Procedures

Both the Complainant and the Respondent have a right to appeal the decision based on the following:

- Procedural irregularity that affected the outcome of the matter
- New evidence that was not reasonable available at the time of the matter
- The Title IX Coordinator, Investigator or Decision-Maker(s) had a conflict of interest or bias for or against one of the parties

The Title IX Coordinator will notify the other party when an appeal is filed. The appeal is heard by a panel of decision makers different than those that participated in the original investigation. Both the Complainant and the Respondent may provide a written statement in support of or challenging the outcome. The panel will issue a written decision, describing the result and rationale, and provide the written decision simultaneously to both parties.

Contact Information

More information on Title IX and other sexual misconduct policies and procedures can be found online at www.lee.edu/know-more/ or by email (TitleIXSupport@lee.edu) or by contacting a Title IX Coordinator.

Title IX Coordinator

Jose Martinez — josmartinez@lee.edu

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