

Amherst College

Interim Title IX Policy & Interim Title IX Grievance Process

Effective August 14, 2020

In May 2020, the U.S. Department of Education released new regulations that change the scope of sexual misconduct that falls under Title IX and which govern the investigation and grievance processes required for Title IX matters. This *Interim* Title IX Policy and *Interim* Title IX Grievance Process are based on those new regulations; both apply to students, faculty, and staff. Concerns of sexual misconduct that do not fall under this policy, due to the required narrowing of scope of behaviors covered by Title IX, continue to be prohibited by the College and may be adjudicated under the College's Non-Discrimination and Harassment Policy.

The College encourages the reporting of all forms of sex- or gender-based concerns. The College is committed to creating and to continually fostering a community of our care, fairness, dignity, and respect. The Amherst Title IX office is available to support all members of the community in matters related to sexual misconduct.

In accordance with the U.S. Department of Education's Office for Civil Rights guidance, the *Interim* Title IX Policy and *Interim* Title IX Grievance Process are effective as of August 14, 2020; they will only apply to reported Title IX Prohibited Conduct that is alleged to have occurred on or after August 14, 2020. Reported incidents of sexual misconduct that are alleged to have occurred before August 14, 2020 will be subject to the College's Sexual Misconduct Policy in place at the time of the alleged incident and will be investigated and adjudicated according to the processes in place for the 2019-2020 academic year.

Title IX Compliance Statement

Amherst College is required to adhere to all federal and state civil rights laws barring discrimination, including, but not limited to, Title IX of the Education Amendments of 1972 ("Title IX").

Amherst is committed not only to compliance with these mandates but also to a culture that promotes the promise of these equal opportunity civil rights laws. Title IX prohibits discrimination based on sex in educational programs and activities. Amherst has developed policies and procedures that prohibit sex discrimination in all of its forms.

Purpose of Policy

The purpose of this policy is to provide the Amherst College community with a set of expectations regarding sex-based conduct that is prohibited by the College and by Title IX. In addition, this policy also:

1. Identifies the Title IX Coordinator, Deputy Coordinators and their roles;

2. Provides definitions of behavior that are prohibited by this policy and by Title IX, including a Statement Against Retaliation;
3. Provides information about how College community members can obtain support and access confidential resources;
4. Provides information about how to submit to the College a report of behaviors prohibited by this policy;
5. Provides information about how a report against a College community member will be assessed; and
6. Provides information about the options available to resolve concerns of behaviors prohibited by this policy.

Amherst's Title IX Coordinators

Title IX Coordinator

The Title IX Coordinator oversees the College's centralized review, investigation, and resolution process for reports of Title IX Prohibited Conduct and coordinates the College's compliance with Title IX. The Title IX Coordinator is supported by several College administrators who serve as Deputy Title IX Coordinators and also leads the College's Title IX Team.

Laurie Frankl

Amherst College
Converse Hall 105E
Amherst, MA 01002
413-542-5707
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Deputy Title IX Coordinators

Deputy Title IX Coordinators can be contacted by telephone, by email, video call, or in person during regular office hours. The duties and responsibilities of the Title IX and Deputy Title IX Coordinators include: supporting community members; training; and the oversight of policies and procedures.

For Students:

Dean Gendron

413-542-2337
dgendron@amherst.edu

Angie Tissi-Gassoway

413-542-2337
atissi@amherst.edu

For Athletics:

Maria Rello

413-542-8467

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For Staff & Visitors:

Maria-Judith Rodriquez

413-542-2372

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For Faculty:

Catherine Epstein

413-542-2334

cepstein@amherst.edu

Overview

The College is committed to treating all individuals with dignity, care, and respect. All Amherst College community members affected by Title IX Prohibited Conduct have access to support resources through the College. The College encourages Amherst community members to seek the support of campus and community resources. The College can provide guidance about College policy and assist persons in obtaining information about available resources. Individuals are encouraged to use all available resources, regardless of whether an incident occurred recently or in the past.

Amherst's Title IX Team

All reports are reviewed by the College's Title IX Team. This interdepartmental team, led by the Title IX Coordinator, oversees this policy. Members of the Title IX Team include the Title IX Coordinator, Deputy Title IX Coordinator(s) for students, representatives from the Office of Students Affairs, the Amherst College Chief of Police, and others as may be necessary.

The Title IX Team also oversees the resolution of reported Title IX Prohibited Conduct through the College's Title IX Grievance Process.

Application and Scope of Policy

This policy applies to all Amherst College community members, including students, faculty, and staff. This policy also applies to visitors, vendors, and independent contractors of the College. When used in this Policy, the term "employee" refers collectively to faculty and staff members. All College community members are responsible for their actions and behavior, whether on or off-campus. Community members should be mindful of their behavior no matter where they are in the world. This policy applies both to on-campus and some off-campus conduct.

Off-Campus Conduct Review

Not all off-campus conduct falls within this policy. For purposes of determining whether off-campus behavior falls under this policy, the College will, as is required by federal law, review the off-campus conduct to determine if it meets the legal threshold for off-campus conduct that is covered by Title IX.

The Five-College Consortium

Amherst College has joined with Smith College, Mount Holyoke College, Hampshire College, and the University of Massachusetts Amherst to form the Five Colleges. Any College community member, including Five-College students and Amherst College students, who wishes to report concerning behavior that occurs at an institution other than their home campus may do so by contacting the Title IX Office at either: 1) their home institution; or 2) the institution where either: a) the behavior occurred or b) where the alleged perpetrator of the concerning conduct is enrolled. As appropriate, the Amherst Title IX Office will coordinate with another institution in support of any persons affected by reported Title IX Prohibited Conduct.

Coordination with Non-Discrimination

Title IX Prohibited Conduct can occur in conjunction with other forms of sexual misconduct or misconduct related to an individual's actual or perceived protected identity [race, national or ethnic origin, color, religion, sex or gender (including pregnancy, sexual orientation, gender expression, and gender identity), age (over 40), disability, genetic information, military service, or any other characteristic or class protected under applicable federal, state, or local law]. Targeting individuals on the basis of protected identity may constitute a violation of the College's community standards, this Policy, and/or the College's Non-Discrimination and Harassment Policy. When reports of Title IX Prohibited Conduct include allegations that community members may have been targeted for or subjected to misconduct because of their actual or perceived protected identity the College will, so long as it is possible under federal law, coordinate the investigation and resolution efforts. Formal Complaints that allege behaviors that are prohibited both by this Policy and other College policies may, but will not necessarily be, investigated and resolved in a consolidated manner.

Statement on Privacy

The College is committed to respecting privacy in responding to reported concerns of identity-based discrimination or harassment. Consistent with the Family Educational Rights and Privacy Act of 1974 ("FERPA"), information related to a report of discrimination or harassment will be shared with only those individuals who "need-to-know" the information in order for the College to properly assess and resolve the matter.

Although the Title IX office may choose to release aggregate statistics regarding implementation of this policy, no individually-identifiable information will be released by the College except as required by law or College policy.

If a report of Title IX Prohibited Conduct discloses an immediate threat to the College campus community, the College may, in accordance with its obligation under the Clery Act, issue a Timely Warning notice of the conduct to the community in the interest of the health or safety of the broader campus community. Immediately threatening circumstances include, but are not limited to, reported incidents of recently occurring Title IX Prohibited Conduct that include the use of force, a weapon, or other circumstances that may represent a serious and ongoing threat to College students, faculty, administrators, staff or visitors.

All resolution proceedings are conducted in compliance with the requirements of FERPA (as applicable), the Clery Act, Title IX, and College policy. No information shall be released from such proceedings except as required or permitted by law or College policy.

Policy Definitions

Complainant

An individual who is alleged to have experienced conduct that could constitute Title IX Prohibited Conduct. A Complainant is not necessarily a person who has filed a Formal Complaint.

Formal Complaint

A Formal Complaint is a written document filed and signed by a Complainant (or otherwise showing that the Complainant is the one filing the document), or signed by the Title IX Coordinator, that alleges that a Respondent has engaged in Title IX Prohibited Conduct. The filing of a Formal Complaint with the Title IX Coordinator initiates the Title IX Grievance Process. At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in a Program or Activity of the College. All Formal Complaints will be investigated by the College. Where the Title IX Coordinator signs a Formal Complaint, the Title IX Coordinator is not a Complainant or otherwise a party.

Program or Activity

Locations, events, or circumstances over which the College exercises substantial control over both the Respondent and the context in which the Title IX Prohibited Conduct occurs. Examples include, but are not limited to: Book and Plow Farm; the Emily Dickinson Museum, and the Amherst College Wildlife Sanctuary. “Program or Activity” also includes any building owned or controlled by a student organization that is officially recognized by Amherst. “Program or Activity” broadly includes all operations of Amherst College in the United States including “any academic, extracurricular, research, occupations training, or other education program or activity operated” by the College. “Program or Activity” also includes computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of, Amherst College.

Report

A disclosure of any incident or concern regarding Title IX Prohibited Conduct made directly to the Title IX Office, any Title IX Coordinator, any College employee with mandatory reporting responsibilities or to any other person who then subsequently shares the information with the Title IX Office.

Respondent

An individual who has been reported to have engaged in conduct that could constitute behaviors prohibited by this policy.

Title IX Prohibited Conduct is:

- (1) Conduct on the basis of sex;
- (2) Against a person in the United States;
- (3) That is alleged to have occurred in a College Program or Activity; and
- (4) That meets one or more of the following definitions:

Quid Pro Quo Sexual Harassment: A College employee conditioning the provision of an aid, benefit, or service of the College on an individual's participation in unwelcome sexual conduct;

Hostile Environment Sexual Harassment: Unwelcome conduct that a reasonable person would perceive as so severe, pervasive, and objectively offensive that it effectively denies a person equal access to a College Program or Activity.

Sexual Assault: Any sexual act directed against another person, without the consent of that person, including instances where the person is incapable of giving consent.

Dating Violence: Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship; the type of relationship; and the frequency of interaction between the persons involved in the relationship.

Domestic Violence: Is violence, which includes felony or misdemeanor crimes of violence, committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

Stalking: A course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others; or suffer substantial emotional distress.

Note: Other forms of sexual misconduct that do not fall under this policy may be prohibited by the College's Non-Discrimination and Harassment Policy.

Statement on Consent, Coercion, Incapacitation, and Alcohol & Drugs

Consent is:

- A mutual agreement to engage in sexual activity.
- An **outward demonstration** of words and/or actions that clearly communicates a willingness to engage in sexual activity. Consent may not be inferred by arousal or by silence, passivity, lack of resistance, or lack of active response.
- **Continuous** and must be present from the beginning to end of each sexual encounter. Consent may be **withdrawn** at any time through words and/or actions that communicate a desire to stop. If consent is withdrawn, sexual activity must end immediately.
- **Specific** to each form of sexual activity. Agreement to one type of behavior is not agreement to another behavior. Consent to previous sexual activity does not mean consent to future sexual activity, regardless of relationship.
- **Informed and mutually agreed upon;** everyone involved must understand and agree to participate in sexual activity. A person who is incapacitated due to drugs or alcohol, sleep, or unconsciousness they are unable to consent.
- A **voluntary choice** to engage in sexual activity in which persons freely choose the activity without coercion, threats, or force.

In the state of Massachusetts, **consent can never be given by minors under the age of 16.**

Consent is not present if it results from the use or threat of physical force, intimidation or coercion, or any other factor that would impair an individual's ability to exercise their own free will to choose whether or not to have sexual contact. Coercion includes the use of pressure and/or oppressive behavior, including express or implied threats of harm and/or severe and/or pervasive emotional intimidation, which places an individual in fear of immediate or future harm or physical injury or causes a person to engage in unwelcome sexual activity. A person's words or conduct amount to coercion if they impair the other's freedom of will and ability to choose whether or not to engage in sexual activity.

An individual who is incapacitated is not able to make rational, reasonable judgments and therefore is incapable of giving consent. Incapacitation is the inability, temporarily or permanently, to give consent, because the individual is mentally and/or physically helpless due to drug or alcohol consumption, either voluntarily or involuntarily, or the individual is unconscious, asleep or otherwise unaware that the sexual activity is occurring. In addition, an individual is incapacitated if the individual indicates that they are unaware of where they are, how they got there or why or how they became engaged in a sexual interaction. Where alcohol and/or drugs are involved, incapacitation is a state beyond drunkenness or intoxication. Some indicators of incapacitation may include, but are not limited to, lack of control over physical movements, lack of awareness of circumstances or surroundings or the inability to communicate for any reason. An individual may experience a blackout state in which they appear to be giving consent but does not actually have conscious awareness or the ability to consent. It is especially important, therefore, that anyone engaging in sexual activity be aware of the other person's level of intoxication due to alcohol and/or drug use. The relevant standard that will be applied is whether the Respondent knew, or a sober reasonable person in the same position should have

known, that the other party was incapacitated and therefore could not consent to the sexual activity.

Being intoxicated or impaired by drugs or alcohol is never an excuse for sexual misconduct and does not excuse one from the responsibility to obtain consent.

Complainants, Respondents, and Third Parties Can Expect

- The opportunity to meet with the Title IX or Deputy Title IX Coordinator or another member of the Title IX Team to answer questions regarding the College's policies and processes related to Title IX Prohibited Conduct
- Information about the availability of Supportive Measures
- Notice of the option to work with law enforcement and to be assisted by Amherst College Police or other College officials in accessing and communicating with such authorities. This notice will include a discussion of the importance of the preservation of evidence
- The opportunity to request that the College take steps to prevent unnecessary or unwelcome contact or communication with another member of the College community
- Prompt response to reports of retaliation. Any concerns of retaliatory behavior should be immediately reported to Amherst College Police and/or the Title IX Office.

On-Campus Resources

In addition to Confidential Resources listed in this Policy, all College community members have access to a variety of resources provided by the College that can provide crisis intervention services, counseling, academic support and medical services. Staff listed below can support individuals and can assist in coordinating with the Title IX Office. While not bound by confidentiality, these resources will nevertheless maintain the privacy of an individual's information within the limited circle of those involved in the College's review of a Title IX report.

Amherst College Police Department 413-542-2111

ACPD is available 24 hours a day, every day.

Office of Student Affairs/ Administrator on Call 413-542-2337

Available during regular office hours and can assist with academic concerns, changes in housing or other modifications and referrals to other resources. An Administrator on Call is also available 24 hours a day by calling Amherst College Police at (413) 542-2111.

Title IX Coordinator, Laurie Frankl 413-542-5707 | lfrankl@amherst.edu

Available during regular office hours.

Title IX Deputy Coordinators

Available during regular office hours.

- **Dean Gendron** (Students) | (413) 542–2337 | dgendron@amherst.edu
- **Angie Tissi-Gassoway** (Students) | 413-542-2337 | atissi@amherst.edu
- **Maria Rello** (Athletics) | (413) 542–8467 | mrello@amherst.edu
- **Catherine Epstein** (Faculty) | (413) 542-2334 | cepstein@amherst.edu
- **Maria-Judith Rodriguez** (Staff, Administration, and Visitors) | (413) 542–2372 | mjrodriquez@amherst.edu

Community Advisors (CAs)

CAs (formerly Resident Counselors) are students living in the residence halls who are employed by the Office of Residential Life and trained to refer students to campus resources. CAs are mandated reporters.

Peer Advocates for Sexual Respect (PAs)

The Peer Advocates for Sexual Respect are students who receive intensive training and on-going supervision to act as an educational resource and referral source for students who are in need of support on issues of sexuality, relationships, trauma, violence, and sexual respect or misconduct. PAs are NOT mandated reporters.

Community Resources

Students, faculty, and staff may also access resources located in the local community. These organizations can provide crisis intervention services, counseling, medical attention, and assistance in interfacing with the criminal justice system. All individuals are encouraged to utilize the resources that are best suited to their needs, whether on- or off- campus.

Emergency Response

- Amherst College Police Department 413-542–2111
- Amherst (Town) Police Department 413-259–3000

Health and Safety

- Amherst College Health Services 413-542–2266
- Cooley Dickinson Hospital 413-582–2000
- Emergency (Police, EMT, Fire): 911

Campus Reporting Options - Sharing a Concern with the College

All Amherst community members are strongly encouraged to report information regarding any incident of Title IX Prohibited Conduct to the Title IX Office. The College will review and respond to all reports of Title IX Prohibited Conduct. An individual does not have to decide whether or not to engage in the Title IX Grievance Process at the time the report is made. The College recognizes that choosing to make a report, and deciding how to proceed after making the report, can be a process that unfolds over time. The College will respect an individual's autonomy in making these important decisions.

Private Report to the Title IX Office or to a Person Who Is Obligated to Share a Report with the Title IX Office

Any individual who is concerned about Title IX Prohibited Conduct affecting an Amherst College community member may provide that information to the Title IX Office in person, via email or telephone, or by using the online Sexual Misconduct Reporting Form.

Except when submitted pursuant to one's mandatory reporting obligations - as set forth below- a reporting party may choose to disclose their identity as the reporting party OR may choose to submit the report anonymously (see below).

Mandatory Reporters of Information Regarding Title IX Prohibited Conduct

Individuals may also disclose concerns to faculty, staff, and certain student employees who have been designated by the College as "mandatory reporters" of information regarding Title IX Prohibited Conduct.

All College employees, except those identified as Confidential Resources, including faculty and staff, certain student employees, and certain student volunteers, are required to share with the Title IX Office information they learn that gives them reason to believe that an Amherst College community member has been affected by Title IX Prohibited Conduct.

Mandatory reporters are not expected to understand with certainty whether or not the behavior they have learned about meets all of the parameters of the definitions of this policy. Mandatory reporters must report the information to the Title IX Office, who will work with affected persons.

Community Advisors, formally "Residence Counselors," must report to the Title IX Office any information regarding Title IX Prohibited Conduct of which they become aware at any time, regardless of whether they are serving in their role at the time they learned of the behavior.

Students also have the responsibility to report – to a member of the Title IX Office – instances of Title IX Prohibited Conduct of which they become aware while acting in the following roles:

- **Student Security Monitors**
- **Orientation Leaders**
- **Community Engagement Orientation Trip (CEOT) Leaders**

- **First-Year Orientation Trips (FOOT) Leaders**
- **LEAP Leaders**

Anonymous Reporting

Any individual may make an anonymous report concerning an act of Title IX Prohibited Conduct. An individual may report the incident without disclosing their name, identifying the Respondent, or requesting any action. Depending on the level of information available about the incident or the individuals involved, however, the College's ability to respond to an anonymous report may be limited.

Anonymous reports may be made by telephone at 888-497-1022, or online at: www.amherst.ethicspoint.com.

Ethics Point is a service that allows anyone to report suspected misconduct or other issues with complete anonymity, if so chosen. This service allows the person making the report and College administrators to confer about additional details, while the reporting party's identity remains anonymous. All reports will go to the Title IX Coordinator. Persons may also submit anonymous reports using the Sexual Misconduct reporting form and choosing not to submit their identifying information, though the College will be unable to confer with the reporting party.

Post-Report Requests for Confidentiality

The College will take all reasonable steps to review and respond to the reports consistent with any request by the Complainant for confidentiality or to not pursue an investigation. In doing so, the College may take steps to limit the effects of the alleged Title IX Prohibited Conduct without initiating formal action. Examples include: providing increased monitoring, supervision or security at locations or activities where the misconduct occurred; providing training and education materials for students and employees. The College will seek to respect the request of the Complainant, and where it cannot do so, the College will consult with the Complainant and keep them informed about the chosen course of action.

Pursuant to Department of Education regulations, a Complainant's identity may remain undisclosed for the purpose of receiving Supportive Measures, where feasible. However, should a Formal Complaint be filed, the Title IX Grievance Process will be initiated and both parties will receive written notice of the alleged incident to be investigated, which will include the names of both parties.

Reporting Patterns of Title IX Prohibited Conduct

In the event that an individual believes that they may be experiencing behavior that is part of a pattern of Title IX Prohibited Conduct, they should document that behavior and report it to the Title IX Office.

Time Frame for Reporting

Individuals are encouraged to report Title IX Prohibited Conduct promptly in order to maximize the College's ability to respond. The College does not limit the timeframe for reporting. Adjudication processes under this Policy are not available for reports against Respondents who are no longer associated with the College. Further, a Complainant must be participating in or

attempting to participate in a Program or Activity at Amherst at the time the complaint is filed. Regardless of the status of the Respondent, the College will conduct a Title IX review and take appropriate steps depending on the level of control (if any) the College has over the Respondent.

False Allegations / False Information

Anyone who makes a report or a statement or submits false information as part of any process described herein that is later found to have been both materially false and made in bad faith may be subject to disciplinary action. This provision does not apply to reports made in good faith, even if the facts alleged in the report are not substantiated by an investigation or by a finding on a Formal Complaint. No complaint will be considered “false” or “made in bad faith” solely because it cannot be corroborated.

Amnesty for Students Who Report Title IX Prohibited Conduct

The College encourages reporting and seeks to remove barriers to reporting. The College recognizes that an individual who has been drinking or using drugs at the time of the incident may be hesitant to make a report because of potential *Student Code of Conduct* consequences for their own conduct. An individual who reports Title IX Prohibited Conduct, either as a Complainant or as a third-party witness, will not be subject to disciplinary action by the College for their own personal consumption of alcohol or drugs at or near the time of the incident, provided that any such violations did not and do not place the health or safety of any other person at risk. The College may, however, initiate an educational discussion or pursue other educational remedies regarding alcohol or other drugs.

Emergency/Immediate Options

The College encourages all individuals to seek assistance from a medical provider and/or law enforcement immediately after an incident of sexual assault, stalking, domestic violence, or dating violence. This is the best option to preserve evidence and to begin a timely investigative and remedial response. The College will assist any College community member with safety concerns and will provide transportation to the hospital, coordination with law enforcement, and information about the College’s resources and complaint processes.

Assistance is available from the College 24 hours a day year-round by calling the Amherst College Police Department. Any individual can request that a member of the Amherst College Police Department respond and take a report. Students may request to speak with an Administrator on Call or a member of the Counseling Center. Faculty and staff may contact the College’s [Educational Assistance Plan](#). There is no requirement that an individual file an incident report with the Amherst College Police Department in order to speak with an Administrator on Call, a member of the Counseling Center, or a representative of the Employee Assistance Program.

A medical provider can provide emergency and/or follow-up medical services, and the ability to discuss any health care concerns related to the incident in a confidential medical setting may bring peace of mind. The medical exam has two goals: first, to diagnose and treat the full extent of any injury or physical effect (e.g. sexually transmitted infection or the possibility of becoming

pregnant) and second, if performed by a qualified Sexual Assault Nurse Examiner, to properly collect and preserve evidence. There is a limited window of time (typically no longer than 72 to 96 hours) following an incident of sexual assault to preserve physical and other forms of evidence. Taking the step to gather evidence immediately does not commit an individual to any course of action. The decision to seek medical attention and gather any evidence will remain confidential and may assist in the preservation of the full range of options to seek resolution through the College's complaint processes or through the pursuit of criminal action. The College encourages individuals to obtain medical attention promptly after an assault.

Coordination with Law Enforcement

Conduct that is prohibited by this policy may also be criminal under Massachusetts law. The College can assist a Complainant in making a criminal report, either with the Amherst College Police Department or the Town of Amherst Police Department. Filing a report with a law enforcement agency does not require that a Complainant pursue a criminal prosecution. Reports to law enforcement will be forwarded to the Northwestern District Attorney's office for review. The College will, to the extent permitted by law, cooperate with law enforcement agencies if a Complainant decides to pursue the criminal process.

Court-Ordered Restraining Orders

In some cases, an individual may also wish to consider requesting that a local District Court issue an Abuse Prevention Order or a Harassment Prevention Order. These requests are civil proceedings that are independent of the College. Amherst College Police Department can assist community members in learning about and, if requested, filing paperwork with the Court to request an order of protection. If a court order is issued the College will, to the extent possible, assist the protected person in benefiting from the restrictions imposed by the court and will also facilitate on-campus compliance with the order.

Confidential Resources and Support – Making a Confidential Disclosure

The College encourages all Amherst community members to report concerns about Title IX Prohibited Conduct. The College recognizes, however, that not every individual will choose to report to the College or to local law enforcement. For those individuals who do not want their information to be reported to the Title IX Office, there are several confidential resources available for students, staff, and faculty. Staff at these resources are prohibited, either by state law and/or College policy, from releasing an individual's information without that individual's express consent (except under limited circumstances that pose an imminent danger to the individual or to others.) The following resources are confidential. Disclosures made to individuals at these resources will not be shared with the Title IX Office:

On-Campus Confidential Resources

Amherst College Health Services 413-542-2266

Services are available during regular office hours.

Counseling Center 413-542-2354

Counselors are available during regular office hours and after hours through the Administrator on Call. The Center is staffed by medical, psychiatric, and psychological professionals.

Religious & Spiritual Life Advisors 413-542-8149

Advisors are available 24 hours a day through the Administrator on Call or the Amherst College Police Department.

For Employees

Employee Assistance Program 800-828-6025

Ombudsperson Larry Hunt 413-542-5156

Off-Campus Confidential Resources

Center for Women and Community 413- 545-0800 / www.umass.edu/cwc

The CWC provides confidential 24/7 counseling 24 hours a day to support victims of sexual violence, regardless of their sex or gender.

University Health Services University of Massachusetts Amherst 413-577-5000

Generally, open weekdays 8 am to 8 pm and weekends 11 am to 5 pm during the academic year.

Cooley Dickinson Hospital 413-582-2000

Sexual Assault Nurse Examiner (SANE) available to conduct examinations.

Safe Passage 413-586-5066 / www.safepass.org

A confidential 24/7 domestic violence hotline.

Statement Against Retaliation

Amherst College prohibits retaliation. Depending on the circumstances, retaliation may also violate applicable state and/or federal law.

Retaliation is any adverse action taken against a person because of their participation in the processes described in this policy. Such participation includes, but is not limited to: filing a report under this policy; providing information to, or otherwise cooperating with, the Title IX Team, or another College department; or supporting a party in the process of resolving an allegation of Title IX Prohibited Conduct. This policy's prohibition against retaliation applies to

an individual reporting conduct under this policy—even if the content of the report is later disproved—as long as the report was made in good faith.

Title IX Review of Reports

The Title IX Team is positioned to provide seamless and equitable support to any Amherst College community members affected by alleged Title IX Prohibited Conduct, to assess campus safety and to respond to allegations of Title IX Prohibited Conduct.

Initial Assessment of Reports of Title IX Prohibited Conduct

The College will review and respond to reports of Title IX Prohibited Conduct. The Title IX Team, under the leadership of the Title IX Coordinator, will oversee the College's Title IX review process.

In every report of Title IX Prohibited Conduct, the College, through members of the Title IX Team, will make an initial assessment of any risk of harm to individuals or to the campus community and will take steps necessary to address those risks. The College will seek to respect any requests of the Complainant, and where it cannot do so, the College will consult with the Complainant and keep them informed about the chosen course of action. The College's responsibility to review and respond to all allegations of Title IX Prohibited Conduct exists regardless of how the matter is ultimately resolved.

Supportive Measures

Upon receipt of a report, the Title IX Coordinator will contact the Complainant to discuss the availability of Supportive Measures. The Title IX Coordinator will consider the Complainant's wishes with respect to Supportive Measures and inform the Complainant of the availability of Supportive Measures.

Supportive Measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the College's education program or activity without unreasonably burdening the other party, including measures taken in the interest of the safety of all parties or the College's educational environment, or to deter sexual harassment. The College will determine the necessity and scope of any Supportive Measures. Even when a person involved with the Title IX process does not specifically request that action be taken, the College may choose to implement Supportive Measures at its discretion in the interest of individual and/or community safety, or the integrity of the Title IX process.

Supportive Measures may include, but are not limited to:

No-Communication and Restricted Proximity Order (NCRPO)

Also known as No Contact Orders. A student may request, or the College may impose, communication and contact restrictions between College community members. In general, communication restrictions preclude in-person, telephonic, electronic, or third-party communications. The College may also limit an individual or organization’s access to certain College facilities or activities as part of the NCRPO.

Academic, Employment, or Residence Modifications

An individual involved with the Title IX process may request academic or employment modifications or a change in residence after a report of Title IX Prohibited Conduct. An individual who requests assistance in changing their academic or residential situation will receive appropriate and reasonably available modifications.

Emotional Support

The College will provide counseling services, for students, through the Counseling Center or will assist in providing a referral to off-campus agencies.

The College will maintain as confidential any supportive measures provided to the Complainant or Respondent, to the extent that maintaining such confidentiality would not impair the College’s ability to provide the Supportive Measures. The Title IX Coordinator or their deputy are responsible for coordinating the effective implementation of Supportive Measures.

All individuals are encouraged to report concerns about the failure of another individual to abide by any restrictions imposed by a Supportive Measure. The College will take responsive action to enforce measures previously ordered or implemented by the College.

Emergency Removals

The College may remove a Respondent on an emergency basis where the appropriate College personnel determine that a Respondent poses an immediate threat to the physical health and safety of any individual, including the Respondent’s own physical health and safety, regardless of whether there is a pending Title IX Grievance Process. An emergency removal is not limited to instances where the Complainant has reported an alleged sexual assault. Emergency removal may also be necessary to address other forms of alleged Title IX Prohibited Conduct or behaviors related to alleged conduct.

The College will engage in the following four-step process when evaluating the necessity of an emergency removal:

STEP 1: The College will conduct a prompt individualized threat analysis which will focus on the particular Respondent and examine the specific circumstances arising from the allegations of Title IX Prohibited Conduct that may pose an immediate threat to a person’s physical health or safety.

STEP 2: The College will make a finding based on the individualized threat

analysis focusing on whether (1) there is an immediate threat justifying and compelling an emergency removal; (2) the threat is to the physical health and safety of one or more individuals; and (3) the emergency situation specifically arises from the allegations of Title IX Prohibited Conduct.

STEP 3: The College will consider the appropriateness of other Supportive Measures in lieu of removal.

STEP 4: The College will provide the Respondent with notice and an opportunity to appeal the emergency removal.

Appeal of Emergency Removal

Respondents who have been removed from campus on an emergency basis may appeal the separation decision. Appeals of emergency removal decisions consist of an opportunity for the community member to speak with a member of the College administration to articulate the reasons why the separation decision should be reversed. Students who have received notice that they have been removed from the College on an emergency basis can appeal that decision to the Dean of Students, or designee, by sending an email to the Dean of Students, within 72 hours of receipt of notice of the removal decision, and requesting a meeting to request an appeal meeting. Staff members who have received notice that they have been placed on administrative leave can appeal that decision by sending an email to the Chief Human Resources Officer, or designee, within 72 hours of receipt of notice of the removal decision, and requesting an appeal meeting. Faculty members who have received notice that they have been removed on an emergency basis can appeal that by sending an email to the Provost and Dean of the Faculty, or designee, within 72 hours of receipt of notice of the removal decision, and requesting an appeal meeting. Decisions on appeals will be made in writing. The College will endeavor to provide the written decision within 48 hours of the appeal meeting.

Investigative Leave

At the discretion of the College, Faculty and staff Respondents may be placed on Investigative Leave after a Formal Complaint has been filed against them.

Amherst College
Interim Title IX Grievance Process

Effective August 14, 2020

Scope and Purpose

This *Interim* Title IX Grievance Process governs Formal Complaints of Title IX Prohibited Conduct that are filed against Amherst College students, faculty, and staff. The purpose of this *interim* process is to provide the community with a process to investigate and resolve all formal complaints of Title IX Prohibited Conduct that is consistent with applicable legal requirements.

As described in more detail below, Formal Complaints of Title IX Prohibited Conduct are resolved by different Decision Makers, depending on whether the Respondent is a student, staff, or faculty member. For ease of comprehension, when possible this policy refers to “Decision Makers.” The term Decision Makers in this policy refers collectively and interchangeably to the Title IX Student Hearing Board, the Title IX Staff Decision Maker, and the Title IX Faculty Hearing Board, as applicable.

Preliminary Matters

Effect of Pending Complaint on Student Respondents

Where the Respondent is a second semester senior, the College will, in most instances, withhold that student’s Amherst College degree pending conclusion and outcome of the Title IX Grievance Process. If the Respondent is a current student, no notation will be placed on the Respondent’s transcript of a complaint or pending disciplinary action during the Title IX Grievance Process. If the Respondent withdraws from the College before the final resolution of a Formal Complaint, the Respondent’s transcript will be notated to reflect pending disciplinary action, subject to modification to reflect the outcome of the disciplinary action.

Amnesty

A student who files a Formal Complaint or serves as a third-party witness during the Title IX Grievance Process will not be subject to disciplinary action by the College for their own personal consumption of alcohol or drugs at or near the time of the alleged Title IX Prohibited Conduct, provided that such violations did not and do not place the health or safety of any other person at risk. The College may initiate an educational discussion or pursue other educational remedies regarding the use of alcohol or other drugs.

Disability Accommodations

Parties to Title IX matters may request reasonable accommodations for disabilities under the applicable procedures of the College. To initiate the accommodations process, students should contact the Accessibility Services office; staff and faculty should contact the Office of Human Resources.

Advisors

Parties to a Title IX Prohibited Conduct complaint have the right to be assisted by an Advisor of their choice during the Title IX Grievance Process. An Advisor serves to guide the party through the process and may accompany the party to any meeting with a College employee, any meeting with an investigator, and to the hearing. When choosing an Advisor, parties should be mindful of the Advisor's availability. While the College will make reasonable efforts to take into account the Advisor's availability, the College will not allow the Advisor's unavailability to unreasonably delay the Title IX Grievance Process. As described below, parties who come to hearing without an Advisor will be provided a College-appointed Advisor for the hearing.

Role of the Advisor

As set out in Department of Education regulations, a party may choose whether or not to have an Advisor supporting them in all phases of the Grievance Process *except* the hearing phase. Parties must have an Advisor at hearing. Parties who do not have an Advisor to support them at the hearing will be provided an Advisor by the College. The Advisor may not disrupt an investigatory meeting. At hearing, an Advisor may only direct questions at the other party or witnesses as specified in this process. An Advisor may not make verbal objections or other statements of advocacy. The Advisor may consult with the party that they are assisting. The Advisor's role during the hearing process is defined in greater detail below.

Communications

All communications and notices required by these procedures may be made electronically, in hard copy, or in person.

Meetings with Title IX Coordinator

Any party may request to meet with the Title IX Coordinator or designee at any point before, during, or after the process.

Presumption of Not Responsible

The Respondent is presumed to be not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of this process.

Initiating the Grievance Process: Filing a Formal Complaint

Formal Complaint

A Formal Complaint is a written document filed and signed by a Complainant (or otherwise showing that the Complainant is the one filing the document), or signed by the Title IX Coordinator, that alleges that a Respondent has engaged in Title IX Prohibited Conduct. The filing of a Formal Complaint with the Title IX Coordinator initiates this Grievance Process. At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in a Program or Activity of the College. All Formal Complaints will be investigated by the College. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a Complainant or otherwise a party.

Filing Requirements

To initiate the Title IX Grievance Process, the Complainant must submit a Formal Complaint, in paper or electronic format, to the Title IX Coordinator. The Formal Complaint must contain sufficient information regarding the allegations of Title IX Prohibited Conduct to permit the Respondent to understand the allegations being brought and to be able to adequately respond. At a minimum, the Formal Complaint must indicate: the name of the Respondent; the date or approximate date of the complained of conduct; a description of the conduct about which the Complainant is complaining; and the location of the alleged conduct, if known. Further, the Formal Complaint must indicate, to the best of the Complainant's ability, the alleged form(s) of Title IX Prohibited Conduct, as detailed in the College *Interim* Title IX Policy, that the Complainant alleges the Respondent committed. The Formal Complaint should clearly indicate that the Complainant is seeking for the alleged Policy violations to be resolved using this Process. It is not required that the Formal Complaint reflect every detail related to the allegations in the complaint; additional information may be discovered during the investigation.

A Formal Complaint should be filed with the Title IX Coordinator in person, by mail, or by electronic mail, to the Title IX Coordinator, Laurie A. Frankl, lfrankl@amherst.edu.

Review of Formal Complaint

If the Title IX Coordinator or designee determines that a Formal Complaint does not include sufficient information regarding the allegations of instances of Title IX Prohibited Conduct to permit the Respondent to understand the allegations being brought and to adequately respond, the Title IX Coordinator will request that the Complainant re-submit the Formal Complaint.

Opportunity to Amend Formal Complaint

If the investigation reveals other related allegations of instances of Title IX Prohibited Conduct not otherwise detailed in the Formal Complaint, the Complainant will have the opportunity to amend the Formal Complaint to include allegations of these additional related instances.

Timing of Complaints

Formal Complaints may be filed by individuals who, at the time of the filing of the Formal Complaint, are participating in or attempting to participate in the College's Programs or Activities. The College will not reject as untimely any Formal Complaint that otherwise meets all of the threshold criteria detailed in this policy.

Effect of Criminal Proceedings

The adjudication of a Formal Complaint of Title IX Prohibited Conduct under this process is independent of any criminal investigation or criminal proceeding. The College will not wait for the conclusion of any criminal investigation or proceeding to commence its own review, investigation, and, when applicable, proceedings outlined herein. Neither law enforcement's determination whether or not to indict and/ or prosecute a Respondent nor the outcome of any criminal prosecution are determinative of whether the Respondent is responsible for violating College policy.

Dismissal of Formal Complaints

Required Dismissal

At any time prior to the commencement of a hearing, if the conduct alleged in a Formal Complaint would not constitute Title IX Prohibited Conduct even if proved; did not occur in the College's Programs or Activities; or did not occur in the United States, the College is required to dismiss the Formal Complaint under this Process.

Permissive Dismissal

The College may dismiss a Formal Complaint if, at any time prior to the hearing:

- The Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein;
- The Respondent is no longer enrolled or employed by the College; or
- Specific circumstances prevent the College from gathering evidence sufficient to reach a determination as to the Formal Complaint or any allegations therein.

Complaints that are dismissed pursuant to this section may be remanded to appropriate College personnel for review of the alleged conduct. Parties will be simultaneously notified of any decision to dismiss the Formal Complaint. Either party may appeal any decision to dismiss the Formal Complaint through the appeal procedures set forth below.

Agreements Not Recognized by the College

Other than a judicial order, the College will not recognize agreements between the Complainant and Respondent in which the College did not participate.

Notice of Allegations

Following the receipt of a Formal Complaint, the Title IX Coordinator will provide to both parties (if known) a Notice of Allegations. This Notice will include:

- A copy of or link to the College's *Interim* Title IX Grievance Process;
- Information related to the allegations of Title IX Prohibited Conduct alleged in the Formal complaint;
- A statement that the Respondent is presumed not responsible for the alleged conduct;
- A statement explaining that a determination of responsibility is made at the conclusion of the grievance process;
- Information regarding the parties' opportunity to be supported by a Advisor of their choice, who may be an attorney, and that their advisor may inspect and review evidence as provided for in this process;
- A reminder that his process prohibits knowingly making false statements or knowingly submitting false information during the Grievance Process.

Information for Respondent

When a Formal Complaint has been received and following the review described above, the Title IX Coordinator will inform the Respondent that a Formal Complaint has been filed against them, will provide to the Respondent a Notice of Allegations and a copy of the Formal Complaint, and will provide the Respondent with a copy of this Process and its provision, below, for the Respondent to submit a Written Response.

Written Response to Formal Complaint

The Respondent has the opportunity to submit a written response to the Complaint. Written responses must be submitted no later than 10 calendar days from the date the Respondent was provided the Complaint. Responses should be filed with the Title IX Coordinator. The Title IX Coordinator will share the Respondent's written response with the Complainant.

Acceptance of Responsibility

At any point in the process the Respondent may choose to accept responsibility for the conduct alleged in the Complaint. If the Respondent accepts responsibility for the conduct alleged in the Complaint, the process may, but will not necessarily, proceed to the Investigation Phase. If an investigation has already commenced, it may, but will not necessarily, continue to its conclusion. If a Respondent accepts responsibility for the conduct alleged in the Complaint, the Title IX Coordinator will request that the Decision Maker determine the outcome.

Non-Cooperation/ Participation by Parties - No Negative Inference

If the Respondent refuses or fails to meet and cooperate with the Title IX Coordinator or designee or the Investigator, the adjudication of the Complaint will nonetheless proceed. As detailed below, no negative inference will be drawn from the decision of any party to not participate in any part of the Title IX Grievance Process.

Informal Resolution of Formal Complaints

The parties may choose to engage in an informal resolution of the Formal Complaint, so long as the following conditions are met:

- Both parties have received the Notice of Allegations (described below);
- Both parties voluntarily choose to engage in informal resolution;
- Both parties provide informed written consent; and
- The Formal Complaint is not a matter brought by a student Complainant against an employee Respondent.

Informal resolution may include conflict mediation or a restorative conference with a College community member. Sanctions or other remedies may be agreed upon as a result of the informal resolution process. Because the outcomes of voluntary resolution conversations are mutually

developed and agreed upon by the parties involved, an appeal of the process and its result is not permitted. If the parties are unable to agree on a voluntary resolution, the matter will be referred to the Decision Makers by the Title IX Coordinator. No statements made during the informal resolution process may be introduced before the Decision Makers. All information resolutions will be conducted in a reasonably prompt time frame.

Information Sharing

College personnel will take reasonable steps to protect the privacy of persons and information. Process participants, including parties and witnesses, should understand that disclosing information learned during the investigation may compromise the integrity of the investigation and could also be construed as retaliation. Persons are, of course, free to discuss their own personal experiences.

Expectations of Both Parties

- **Review Policy/Forward Questions**
Both the Complainant and the Respondent are expected to review this Process and timely forward any questions or concerns to the Title IX Coordinator.
- **Retain all Potentially Relevant Information**
Both parties are expected to retain - and not destroy - all potentially relevant information in their possession.
- **No Retaliation**
Both parties are expected to adhere to the College's prohibition against retaliation.

Investigation Phase

Investigator

The Title IX Coordinator will designate a trained and impartial Investigator to conduct an investigation of the alleged conduct and provide notice to the parties with the name of the designated Investigator. The Investigator will have specific training and experience investigating allegations of Title IX Prohibited Conduct. The Title IX Coordinator will oversee the Investigation Process.

Opportunity to Object to Investigator Designation

Within 48 hours of receiving notice of the designated Investigator, either party may submit to the Title IX Coordinator a request for removal of the Investigator based on bias, conflict of interest, or an inability of the Investigator to be impartial. Objections to Investigation Designation must include information supporting the request. The Title IX Coordinator will review the request and issue a determination either replacing the Investigator and providing the parties with a new notice of the designated Investigator, or informing the parties that the Investigator will not be replaced.

Investigation Process

The Investigator will coordinate the gathering of information from the Complainant, Respondent, and other individuals or entities that may have relevant information regarding the allegations using any of the methods listed below.

Document/Records Review

In addition to reviewing any documents submitted by the Complainant and Respondent, the Investigator will seek to obtain other records which may be directly related to the allegations raised in the Formal Complaint, including, but not limited to documents, police records, electronic or other record of communications between the parties or witnesses or records or other potentially relevant information. In seeking to obtain such evidence, the Investigator will comply with applicable laws and College policies.

Site Visits

The Investigator may visit sites or locations of potential relevance to the allegations in the Complaint and record observations through written or photographic documentation.

Complainant and Respondent Interviews

The Complainant and the Respondent will have the opportunity to be interviewed (separately) by the Investigator. The Investigator may offer the parties the opportunity to participate in more than one interview.

Witness Interviews

The Investigator will make a good faith effort to contact and interview any witnesses, including those persons no longer at the College or who may not have any affiliation with the College. The parties will have the opportunity to provide witness names to the Investigator. The Investigator may also interview any other individual believed to have relevant information. The Investigator will inform each witness or other individuals interviewed that they are prohibited from retaliating against the Complainant and Respondent or other witnesses.

All witnesses who provide statements to the Investigator are expected to participate in the hearing on the matter. The Title IX Coordinator, or designee, will notify all witnesses of the date, time, and location of the hearing and offer each witness an opportunity to meet to discuss the Title IX Grievance Process.

Experts

The Investigator may contact any expert the Investigator determines is necessary to ascertain the facts related to the Complaint or other information the Investigator determines is necessary to assist a Decision Makers in determining whether it is more likely than not that the Respondent is responsible for the allegations in the Complaint. The parties may, but are not required to, identify expert witnesses who they believe will assist the Decision Makers in determining whether it is more likely than not that the Respondent is responsible for the allegations in the Complaint.

Mental Health Records

The College will not require that parties disclose medical and counseling records, which are privileged and confidential documents; such records cannot be shared with anyone other than the treating professional unless the patient agrees to disclosure. Any voluntary disclosure of such records must be in writing by the individual about whom the records concern. Individuals should be aware that there are legal implications to agreeing to share and produce privilege records in whole or in part. The production of partial records may lead to the waiver of privilege and the production of additional records. Individuals are encouraged to seek advice from a knowledgeable source about the possible consequences of releasing this type of information. A party who, after due consideration, believes that their own medical or counseling records would be helpful in determining whether Title IX Prohibited Conduct occurred may voluntarily decide to present their own medical or counseling records to the Investigator. The Investigator will review the records and will use discretion to determine what information, if any, is directly related to the adjudication of the Formal Complaint. Any and all records deemed directly related will be made available to the other party for review.

Please note that if a party decides to produce such records, the records must be produced in their entirety. The production of excerpts or selected documents is unacceptable and will not be considered. A party who does not wish to provide substantive medical records may decide to voluntarily provide a verification of therapeutic or medical services to the investigator, confirming simply that such treatment occurred, but not providing any details regarding the treatment.

Review of Evidence

Prior to the Investigation Report being finalized, the parties will have an opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including any evidence upon which the College does not intend to rely in reaching a determination regarding responsibility. The Parties and their advisors, if identified, will each be sent in hard copy or electronic format the evidence for review and will have 10 days from the date of receipt to provide the Investigator with a response, if any.

Investigation Report

Contents

After receiving the parties' written responses to the evidence, if any, the Investigator will prepare an Investigation Report summarizing and analyzing the relevant information determined through the Investigation and referencing any supporting documentation or statements. The Investigator may provide a summary of their impressions including context for the information. The Investigator will not make a recommendation or a determination as to whether or not an alleged violation occurred; that decision is reserved for the Decision Maker.

Distribution to Parties

The Complainant and the Respondent and their respective advisors will receive a copy of the final Investigative Report at least 10 days before the Hearing. Parties may submit, to the Title IX Coordinator, a written response to the final Investigation Report. Written responses must be filed

within 7 days after receipt of the final Investigation Report. Written responses will be shared with the other party.

Notice of Hearing

The Title IX Coordinator or designee will issue a Notice of Hearing to the Complainant and the Respondent. The Notice of Hearing will identify the date, time, and place of the hearing and provide the names of the Decision Makers. The Notice of Hearing will be sent at least 7 days prior to the hearing date.

Decision Makers

Student Respondents: Title IX Student Hearing Board

The Dean of Students or designee will serve as the non-voting Chairperson (“Chair”) and as an advisor to the Title IX Student Hearing Board. Title IX Student Hearing Board members shall not consist of faculty, staff, or students at Amherst College, including the Title IX Coordinator or the Investigator. The Title IX Student Hearing Board for a particular hearing is composed of three persons that are drawn from a pool of higher education professionals who have been recruited from the area community and trained by the College to serve on the Title IX Student Hearing Board. The Dean of the Faculty or designee may determine an alternate Title IX Student Hearing Board composition if a full Title IX Student Hearing Board cannot reasonably be convened. The Title IX Student Hearing Board is charged with making a determination of responsibility.

Faculty Respondents: Title IX Faculty Hearing Board

A Title IX Faculty Hearing Board shall be formed consisting of three faculty selected by the Committee of Six from among the faculty elected to the Committee on Adjudication. The Title IX Faculty Hearing Board will select its own chair. The Title IX Faculty Hearing Board is charged with making a determination on responsibility.

Staff Respondents: Title IX Staff Hearing

Hearings on Title IX Formal Complaints against College staff will be heard before the Chief Human Resources Officer, or designee, who will serve as Chair and Decision Maker. The Chief Human Resources Officer, in their capacity as Chair and Decision Maker, is charged with making a determination on responsibility.

Training for Decision Makers

Decision Makers will annually receive training regarding: how to serve impartially, issues of relevance, including how to apply the rape shield protections provided for Complainants, any technology to be used at the hearing, the manner of deliberation, the application of the preponderance of the evidence standard, and the College’s *Interim* Title IX Policy and *Interim* Title IX Grievance Process.

Recusal of Decision Makers

Decision Makers shall recuse themselves from any Title IX Grievance Hearing if they believe that they cannot serve without bias, conflict of interest, or an ability to be fair and impartial.

Pre-Hearing Opportunities

Request to Reschedule Hearing

Either party may request to reschedule the hearing. Requests to re-schedule must come directly from the Complainant or Respondent, must be submitted to the Title IX Coordinator or designee at least 48 hours prior to the scheduled start of the hearing, whenever possible, and must specify the reasons for the request. The Title IX Coordinator or designee will decide whether to grant such a request. The Title IX Coordinator or designee retains the discretion to reschedule the hearing at any time for good cause.

Request to Remove a Decision Maker

The Complainant and Respondent may submit written requests to the Title IX Coordinator or designee asking that a Decision Maker be removed for reasonable articulable grounds of bias, conflict of interest, or an inability to be fair and impartial. The written request must identify the grounds for the removal and be received by the Title IX Coordinator or designee within 72 hours following delivery of the Notice of Hearing. The Title IX Coordinator or designee will decide whether to grant such a request. Removal of a Decision Maker may require that the hearing be rescheduled.

Request to Present Witnesses Not Previously Identified

A party wishing to call any witness at hearing who has not been previously identified and/or interviewed by the Investigator, must submit a list of witnesses to the Chair or designee no later than 5 days prior to the scheduled start of the hearing. Parties should provide contact information (e-mail address; telephone number, if known) for any witness who is not a member of the Amherst College community.

A Request to Present Witnesses Not Previously Identified must include the following:

- A written statement and/or description of the information the witness is expected to provide at the hearing;
- A summary of why the witness' expected testimony is relevant to making a decision on the Formal Complaint; and
- The reason why the witness was not interviewed by the Investigator.

The Chair or designee will determine if there is sufficient justification for permitting a witness who was not interviewed by the Investigator. Generally, neither party will be permitted to call character witnesses. The Chair or designee may require that the Investigator interview newly suggested witnesses.

Hearing Board Witnesses

Decision Makers may call any person deemed to have relevant information.

Both parties and the Decision Makers will learn, prior to hearing, whether any witnesses have been approved, under these provisions, to appear.

Information for Consideration at Hearing

Information Not Provided to the Investigator

A party wishing to present documentation or other evidence at the hearing that was not provided to the Investigator, must submit to the Chair the list of documents or other evidence no later than 72 hours prior to the scheduled start of the hearing and a request that the documents or other evidence be available at hearing. The request must contain the following information:

- Identification and description of the document or other evidence the party intends to present;
- A summary of why the document or other evidence is relevant to making a decision on the complaint; and
- The reason why the document or other evidence was not provided to the Investigator.

The Chair will determine if the additional documentation or other evidence is relevant and if there is sufficient justification for permitting its use at the hearing. The Chair may also require that the Investigator review the additional documentation or other evidence. If the additional documentation or evidence is approved, it will be shared with the parties and the Decision Maker prior to the hearing.

Prior Sexual Behavior, Prior Findings of Similar Acts of Title IX Prohibited Conduct

When the Respondent raises consent as a defense, questions or information regarding prior consensual sexual contact between the parties may be deemed relevant, but is not necessarily determinative of whether it is more likely than not that the Respondent is responsible for the allegations in the Complaint.

Question and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless (1) such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the alleged conduct; or (2) the questions or evidence concern specific incidents of the Complainant's prior sexual behavior with the Respondent and are offered to prove consent to the alleged conduct.

The above restrictions do not apply to information about a Respondent's sexual predisposition or prior sexual behavior.

A prior finding (post appeal opportunities) of responsibility for a similar act of Title IX Prohibited Conduct ("prior bad act") will always be deemed relevant and may be considered in making a determination as to responsibility and/or assigning of a sanction.

Mental Health Information

Any information regarding any person's mental health that was not previously provided to the Investigator, or otherwise approved for admission via a pre-hearing request, may not be introduced at hearing.

Hearing Requirements

Participants

Those who may be present at the hearing are: the Complainant; the Respondent; each party's Advisor; the Investigator; witnesses; and other College officials. The Investigator and witnesses may only be present in the hearing room during the Call to Order and when they are providing information to the Decision Makers. The Complainant and Respondent will be present in the hearing room, unless as prescribed under Alternative Attendance.

Attendance at Hearing

Non-Attendance

If a party does not attend a hearing for any reason other than an emergency, the hearing may be held in their absence. The refusal by a party or witness to participate in a live hearing and to submit to cross-examination can have significant effects on the outcome, including by limiting the statements of the non-participating party on which the decision-maker may rely in making a determination, including statements made to other witnesses.

Alternate Attendance

A Complainant or Respondent may request to participate in the hearing by suitable means that would not require physical proximity to the other. This can include, but is not limited to, using technology to facilitate participation from a remote location. Technology will enable participants to meaningfully interact with the person answering questions. Witnesses may request to appear virtually. The Chair may allow for witnesses to appear through technological means rather than in-person attendance. All requests by a party to participate in the hearing other than in person must be submitted in advance of the hearing to the Title IX Coordinator.

Standard of Evidence

The Decision Maker will determine the Respondent's responsibility by a preponderance of the evidence standard, which is whether the information provided at the hearing supports a finding that it is "more likely than not" that the Respondent is responsible for the alleged violation(s).

Recording Proceedings

Title IX Hearings are audio-recorded for the purpose of: (1) reference by the Decision Maker; (2) review on appeal by the Appeals Officer; (3) the official record of the hearing; and (4) availability to the Complainant or Respondent, upon request. Decision Maker deliberations are not audio-recorded.

Privacy

Hearings are not public and, to the extent technology is necessary to effectuate the requests of the party, all live video will be closed circuit and not available or accessible to non-participants.

Expectations of Hearing Participants

Truthful Testimony

The Complainant, Respondent, witnesses, and other individuals sharing information with the Decision Makers are expected to provide truthful information in any proceeding under this Policy.

Participant Conduct

Any participant in the live hearing, including Advisors, must conduct themselves appropriately and respectfully towards all other participants. Participants may not act, and Advisors may not question parties or witnesses, in a way that may be considered by a reasonable person to be abusive, intimidating, harassing, or disrespectful. The Chair, in their sole discretion, may respond to such behavior by adjourning the hearing and excluding the offending person.

Time Limitations

The Chair retains discretion to reasonably limit the time of any part of the Hearing Process.

Conducting the Hearing

Role of the Chair

The Chair is responsible for maintaining an orderly, fair, and respectful hearing and has broad authority to respond to disruptive or harassing behaviors, including adjourning the hearing or excluding offending persons. During questioning of parties and witnesses by Advisors, the Chair will determine whether questions seek relevant information. The Chair will explain any decision to exclude a question as seeking non-relevant information.

Determining Relevance

In determining whether a question is seeking relevant information, the Chair will focus on whether the question seeks information, material to the allegations at issue, that would aid Decision Makers in determining whether the allegations are more likely or less likely to be true.

Role of Advisors at Hearing

Each party's Advisor will directly, orally, and in real time ask the other party and any witnesses relevant questions and follow-up questions.

Prior to the hearing, the parties are encouraged to meet with their Advisors in order to discuss with their Advisor the questions they would like asked at the hearing.

Parties are also encouraged, but not required, to submit to the Title IX Coordinator questions they would like asked at the hearing. The Title IX Coordinator will forward questions to the Chair. Pre-submitting questions may substantially shorten the duration of the hearing, since the Chair will have had the opportunity to assess the questions and whether they seek relevant information in advance of the hearing.

Advisors may not interject, coach, advocate for, or otherwise speak on behalf of the party they are supporting at hearing. This includes a prohibition against responding to, questioning, or arguing with the Chair regarding relevancy determinations.

In the event that a party does not have an Advisor present at hearing to conduct the questioning of the other party and witnesses, the College will provide an Advisor, of the College's choosing, to conduct the questioning at hearing.

Information Protected by Privilege

Information or evidence protected by a legally-recognized privilege or which relates to any party's medical, psychological, and similar records cannot be considered relevant unless the party about whom the information is requested or submitted has provided voluntary written consent to the inclusion of the otherwise protected information.

Duplicative/Repetitive Questions

Questions that are duplicative or repetitive may be deemed to not be seeking relevant information and may be excluded.

Decisions Regarding Questions

The Chair is not required to provide lengthy or complicated explanations in support of a relevance determination. Rather, it is sufficient, for example, for the Chair to explain that a question is excluded because the question seeks information related to otherwise excluded information or because the question seeks information about a detail that is not probative of any material fact concerning the allegations.

Discretion of the Chair

The Chair retains discretion to alter, at any time, the order of the hearing process, as needed.

Hearing Process

Call to Order

The Chair will call the hearing to order. All parties, the Investigator, and available witnesses will be present to hear the Call to Order. The Chair will describe the hearing process and provide an opportunity for all parties to ask procedural questions prior to opening remarks and the presentation of information. The Chair will ask each individual present to state their name and identify their role during the hearing.

Complainant's Opening Remarks

The Complainant may present their own account of the events.

Respondent's Opening Remarks

The Respondent may present their own account of the events.

Questioning of Complainant

The Hearing Board may ask Complainant questions, followed by the Respondent's Advisor. The Hearing Board will then have an opportunity to ask additional questions of the Complainant.

Questioning of Respondent

The Hearing Board may ask the Respondent questions, followed by the Complainant's Advisor. The Hearing Board will then have an opportunity to ask additional questions of the Respondent.

Questioning of Witnesses

Any witnesses that have been identified by the parties or Decision Makers for questioning will then each be questioned directly by each party's Advisor and then Hearing Board. Once a witness is done answering questions, they will be asked to leave the hearing.

Recall of Witnesses or Parties

The Decision Makers reserve the right to recall any party or witness during the hearing process for further questions and to seek additional information necessary to make a decision.

Final Questions

The Chair will offer a final opportunity for any additional questions by each party's Advisor.

Summary Statements

Prior to the close of the Hearing, the Complainant and the Respondent may make brief summary statements to the Decision Makers. The Complainant will present their summary statement first, followed by the Respondent.

Effect of Non-Appearance at Hearing or Failure or Refusal to Submit to Questioning

As described above, the failure or refusal of a party or witness to participate in a hearing and/or to submit to questioning can have a significant effect on the outcome of a matter, including by limiting the Decision Makers' ability to rely on statements of the party who did not submit to questions. More specifically:

Effect of Failing to Respond to Question by Party's Advisor

If a party or witness is present at the live hearing, but disagrees with a determination by the Chair of a relevancy determination, they have the choice of either (1) abiding by the Chair's determination and answering the question, or (2) refusing to answer the question. If the party or witness refuses to answer the question, the Decision Makers may not rely on any statement about which a party or witness has declined to answer cross-examination questions.

Failure to Respond to Question(s) by Decision Maker

If a party or witness refuses to answer a question posed by a Decision Maker, the Decision Makers are not barred from relying on statements that related to the question posed in its determination of responsibility. The Decision Makers may not, however, draw any inference about the determination of responsibility based solely on a party's refusal to answer questions.

Decision Making

At the conclusion of the hearing, everyone other than the Chair, the College's legal counsel, and Decision Makers, if different than the Chair, will be dismissed from the hearing to allow the Decision Makers to deliberate in private. The Chair and the College's legal counsel may remain for deliberations, but do not vote. The Decision Makers' decision will be determined by majority vote. If the Decision Makers make a responsible finding, then the Chair or Title IX Coordinator, as applicable, will provide the Decision Makers with information related to the Respondent's prior conduct history, if applicable.

If the Decision Makers find the Respondent responsible for one or more alleged policy violations, it will deliberate regarding the appropriate sanction(s) and reach a decision by majority vote. The votes themselves will not be shared with the parties and only the decision on responsibility and any applicable sanction will be announced. The Decision Makers may schedule additional meetings to complete deliberations if necessary.

Sanctions

If the Decision Makers find the Respondent responsible for one or more policy violations of the *Interim* Title IX Policy, the Decision Makers will impose appropriate sanctions. Sanctions may be issued individually or in combination with other sanctions. In determining the appropriate sanction(s), the Decision Makers may consider a number of factors including, but not limited to: restoring or preserving the Complainant's equal access to the College's Programs or Activities; the harm suffered by the Complainant; any ongoing risk to either the Complainant or the community posed by the Respondent; the impact of the violation(s) on the community, its members or its property; any previous conduct violations; any mitigating or aggravating circumstances.

Sanctions for Title IX Prohibited Conduct may range from mandated education, a formal warning, probation, suspension, expulsion (for students), or corrective action up to and including termination (for employees).

Sanctions may also require that existing Supporting Measures stay in place for a prescribed period of time. Likewise, sanctions may involve the imposition of new remedies, such as no contact orders, disciplinary probation, housing placement, or academic adjustments, based upon the facts developed during the investigation and the hearing, as well as the conclusions reached by the Decision Makers.

Written Determination of Hearing Outcome

The Chair will draft and simultaneously distribute to the parties a written determination of the hearing outcome, that will include the following:

- Identification of the allegations of Title IX Prohibited Conduct;

- A description of the procedural steps taken from the receipt of the Formal Complaint through to the determination, including: notifications to the parties; the identity of the Investigator; dates of interviews with parties and witnesses; dates and locations of site visits; methods used to gather other evidence; hearing date; and information related to any actual or perceived procedural issues, including delay for good cause.
- Findings of fact supporting the determination;
- Conclusions regarding the application of the *Interim* Title IX Policy to the facts;
- A statement of, and rationale for, the Decision Makers' finding as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the College imposes on the Respondent, and whether remedies designed to restore or preserve equal access to the College's Programs or Activities will be provided by the College to the Complainant; and
- Information regarding appeal opportunities.

Appeal Process

Eligibility and Timeline

Either party may appeal the outcome of the hearing by filing a written Appeal Request, which must be delivered to the Title IX Coordinator within 7 calendar days of the Notice of Outcome. The Title IX Coordinator will inform the non-filing party that an Appeal Request has been filed.

Grounds for Appeal

The appeal may only be based on one or more of the following grounds and must state, with specificity, the moments during the process that gave rise to the stated grounds of appeal:

- Procedural irregularity that affected the outcome of the matter (i.e. a procedural error that, but for the error's occurrence, could have resulted in a different outcome);
- Bias or conflict of interest, by a Decision Maker, the Investigator, or the Title IX Coordinator (i.e. a Decision Maker, the Investigator, or the Title IX Coordinator demonstrated through specific words or actions that they were predisposed for or against one of the parties);
- Inappropriateness of the Sanction (i.e. the sanction is disproportionate to the gravity of the violation(s) for which the Respondent has been found responsible); or
- New Information that was not reasonably available at the time of the determination regarding dismissal of the Formal Complaint or responsibility was made that was not

reasonably available at the time and that could have affected the outcome of the decision on dismissal or responsibility.

Standard of Review

The appeal is based on the record and is limited to the four possible bases for appeal. The appeal is not a de novo review.

Threshold Review

The Title IX Coordinator will forward the Appeal Request to:

- For **Student** Respondent matters: Provost and Dean of the Faculty, or designee;
- For **Staff** Respondent matters: Chief Financial and Administrative Officer, or designee;
- For **Faculty** Respondent matters: Provost and Dean of the Faculty, or designee.

For purposes of this process, persons who decide Appeal Requests are herein collectively referred to as the Appeals Officer.

Within 7 business days of the timely submission of the Appeal Request, the Appeals Officer will review the Appeal Request to determine, as a threshold matter, whether one or more of the Grounds for Appeal has been sufficiently alleged to warrant Review of the Merits—based on the following:

New Information

The Appeals Officer will determine whether the “new information” identified in the Appeal Request is:

- Relevant
- Substantive, and
- New (i.e. not available at the time of the hearing)

Inappropriateness of the Sanction

The Appeals Officer will determine whether the sanction is disproportionate to the gravity of the violation(s) for which the Respondent has been found responsible. In making this determination, the Appeals Officer will defer to Decision Makers’ decision unless it has no rational basis.

Procedural Irregularity

The Appeals Officer will determine whether the procedural irregularity identified in the Appeal Request:

- Constitutes a procedural irregularity; and

- Is corroborated by the record.

Bias by a Decision Maker, the Investigator, or the Title IX Coordinator

The Appeals Officer will determine whether the specific words and/or actions identified in the Appeal Request:

- Are corroborated by the record, and
- Could indicate that the Chair, Decision Maker, the Investigator, or the Title IX Coordinator was predisposed for or against one of the parties.

If the Appeals Officer determines that Review of the Merits is not warranted, the Appeal Request will be denied and the Appeals Officer will inform the Title IX Coordinator, who will notify both parties (normally within 48 hours).

If the Appeals Officer determines that Review of the Merits is warranted, each party will be notified. The party who did not submit the Appeal Request will be provided a copy of the Appeal Request and given 7 calendar days to submit a written Response to Appeal Request to the Title IX Coordinator, who will forward it to the Appeals Officer and the party who filed the Appeal Request. The Response to Appeal Request is optional – the absence of a Response to Appeal Request will not be taken into consideration in the Review of the Merits.

Review of the Merits

If Review of the Merits was granted on the basis of Procedural Irregularity and/or Bias of a Decision Maker, the Investigator, or the Title IX Coordinator, the Appeals Officer will conduct a Review of the Merits, which is based solely on the Appeal Request, the Response to Appeal Request (if any), and the record of the original hearing, as follows:

Procedural Irregularity

The Appeals Officer will determine whether it is substantially more likely than not that, if the identified procedural irregularity(s) had not occurred, the hearing could have resulted in a different outcome.

Bias of a Decision Maker, the Investigator, or the Title IX Coordinator: The Appeals Officer will determine whether it is substantially more likely than not that the specific words and/or actions identified in the Appeal Request indicate that a Decision Maker, the Investigator, or the Title IX Coordinator, was predisposed for or against one of the parties.

If the Appeals Officer finds merit to the appeal, it will remand the matter to a new hearing conducted by Decision Makers who did not decide the original matter.

The Appeals Officer will communicate its decision to the Title IX Coordinator, who will inform the parties. The Appeals Officer's decision is final.

Review by Original Decision Makers

If the Review of the Merits was granted on the basis of New Information and/or Inappropriateness of the Sanction, Appeals Officer will remand the matter to the original Decision Makers, which will be convened within 14 calendar days of the decision to grant Review of the Merits. If the original Decision Makers cannot be convened within 14 calendar days, the Appeals Officer may determine whether to extend the deadline or remand the matter to a new hearing board for a new hearing.

Once convened, the original Decision Makers will conduct the Review of the Merits solely on the basis of the Appeal Request, the Response to Appeal Request (if any) and the record of the original hearing, as follows:

New Information

The Decision Makers will assess the weight and effect of the new information in light of all other evidence from the original hearing and will determine whether to:

- Affirm the original finding(s) and sanction(s)
- Affirm the original finding(s), and issue a new sanction(s), or
- Issue a new finding(s) and sanction(s)

Inappropriateness of the Sanction

The original Decision Makers will reconsider the factors relevant to determining sanctions as identified above and will issue a new sanction.

After conducting the Review of the Merits, the original Decision Makers will communicate its decision to the Title IX Coordinator, who will inform the parties. The decision is final.

Order of Precedence

In the event that the Appeals Officer grants a Review of the Merits on multiple Grounds for Appeal, such that reviews by both the Appeals Officer and the original Decision Makers are warranted, the process will begin with Appeals Officer review. If the Appeals Officer finds merit in the appeal and therefore remands the matter to new Decision Makers, any other basis for appeal will be moot. If the Appeals Panel does not find merit on the basis of Material Procedural Error or Bias by the Decision Makers, the Investigator, or the Title IX Coordinator, then the process will continue with Review of the Merits on the basis of New Information and/or Inappropriateness of the Sanction.

Communication During the Appeals Process

In order to preserve the integrity of the Appeal Process, the parties, as well as their respective advisors and witnesses, should direct questions, comments or concerns to the Title IX

Coordinator and refrain from initiating communication directly or indirectly with the Appeals Officer or any other person involved in reviewing the Appeal throughout the duration of the Appeal Process.

Designees

The Appeals Officer may designate someone to fulfill any or all of the responsibilities identified in the Appeal Process. In the absence of the Appeals Officer, the Title IX Coordinator will designate another individual to serve the role of the Appeals Officer.

Records Maintained

The College will maintain an official record of the hearing.

If a student has been found responsible by the Decision Makers for violating the *Interim* Title IX Policy, such records shall be used in reviewing any further conduct issues or developing sanctions and shall remain a part of a student's conduct record.

Generally, suspension, expulsion, and withdrawal pending disciplinary action are permanently noted on a student's transcript. The conduct files of students who have been suspended or expelled from the College are maintained in the Office of Student Affairs for no fewer than 7 years after their departure from the College.

Time Frames

The College will endeavor to undertake and complete each stage of the *Interim* Title IX Grievance Process in a reasonably prompt manner. General time frames for each stage are provided below. The College may delay this process or provide limited extensions of time frames for good cause. Written notice of delays or extensions will be provided to the parties. Good cause includes, but is 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 the accommodation of disabilities.

Investigation Stage: 90 days

Conclusion of the Grievance Process: 21 days

Conclusion of Informal Resolution Process, if utilized: 30 days

Resolution of an Appeal Request: 21 days

Contact Information

Inquiries about Title IX and the application of Title IX regulations to the College may be referred to:

Laurie A. Frankl

Title IX Coordinator

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Office for Civil Rights

Lyndon Baines Johnson Department of Education Bldg.

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Washington, DC 20202-1100

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FAX: 202-453-6012; TDD: 800-877-8339

Email: OCR@ed.gov

Boston Office

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