

CURRY COLLEGE

Investigation and Resolution Procedures for the Resolution of Reports Alleging Sexual Misconduct Outside the Scope of Title IX ("Non-Title IX Procedures")

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I. SCOPE OF THESE PROCEDURES

Under the United States [Department of Education’s Title IX Regulations](#), published May 19, 2020, the department established procedures that are applicable to the investigation and resolution of a narrow category of sexual misconduct cases. Reports of Prohibited Conduct under the college’s [Sexual Misconduct Policy](#) that meet the definitions and jurisdictional elements set forth in the regulations are resolved under the [Procedures for the Resolution of Reports Alleging Sexual Misconduct Falling Within the Scope of Title IX \(“Title IX Procedures”\)](#).

Reports of Prohibited Conduct under the college’s Sexual Misconduct Policy that do not meet the jurisdictional requirements of the new regulations will be resolved through this procedure (“Non-Title IX Procedures”). This does not mean that any case is more or less important but instead a reflection of federal regulations that apply only to a specifically identified set of cases.

Definitions in the Sexual Misconduct Policy will apply to these procedures.

II. NON-TITLE IX PROCEDURES

These procedures are a college administrative process, not a criminal law process.

A. Preliminary Assessment of Report¹ and Provision of Supportive Measures

If the report falls within the jurisdiction of these procedures the Title IX Coordinator will take the following actions:

1. Response Where the Complainant’s Identity Is Known

Where the identity of the Complainant is known, the Title IX Coordinator will promptly contact the Complainant to discuss the availability of supportive measures, inform the Complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the Complainant the process for filing a formal complaint.

The Title IX Coordinator will also offer the Complainant supportive measures designed to restore or preserve equal access to the college’s education programs or activities and will consider the Complainant’s wishes with respect to these measures. (See, SMP, Supportive Measures, Section XVI.A.)

2. Response Where the Complainant’s Identity Is Unknown

Where a report is filed but the identity of the Complainant is unknown, the Title IX Coordinator will assess the nature and circumstances of the report, including whether it provides information that identifies the potential Complainant, the potential Respondent, any witnesses, and/or any other third party with knowledge of the reported incident, and take

¹ The term “report” is defined in the Sexual Misconduct Policy (page 12).

reasonable and appropriate steps to respond to the report of Prohibited Conduct consistent with applicable federal and state laws and these procedures.

3. Response Where the Respondent's Identity is Unknown

Where a report is filed but the identity of the Respondent is unknown, the Title IX Coordinator will assess the nature and circumstances of the report, including whether it provides information that identifies the potential Respondent, any witnesses, and/or any other third party with knowledge of the reported incident, and take reasonable and appropriate steps to respond to the report of Prohibited Conduct consistent with applicable federal and state laws and these procedures.

4. The College's Actions Following an Initial Assessment With Known Complainant i. Where the Complainant Seeks Resolution Under These Procedures

In any case where the Complainant reports Prohibited Conduct and requests resolution under these procedures, the Title IX Coordinator will promptly initiate an investigation. This process begins with the Complainant making a signed, written Formal Complaint. A formal complaint must be filed with the Title IX Coordinator, and may be filed in person, by mail, or by electronic mail, addressed to the Title IX Coordinator.

ii. Where the Complainant Requests That No Formal Complaint Be Pursued Under These Procedures

The college supports any Complainant's decision not to pursue a Formal Complaint under these procedures.

Where the Complainant does not wish to pursue a Formal Complaint under these procedures, the college will honor the Complainant's wishes unless doing so would not adequately mitigate the risk of harm to the Complainant or other members of the college community or when doing so materially impacts the college's ability to provide a safe and non-discriminatory environment for all members of the college community, including the Complainant.

The Title IX Coordinator will consider the following factors, among others, when determining whether to honor the Complainant's wish that no resolution be pursued under these procedures:

- a. whether there have been other similar complaints about the same responding party;
- b. whether the responding party has a history of arrests or disciplinary records from a prior school indicating a history of prior misconduct;
- c. whether the responding party threatened further sexual misconduct, sexual violence, or other Prohibited Conduct against the reporting party or others;

- d. whether the misconduct was alleged to be committed by multiple individuals;
- e. whether the misconduct was perpetrated with a weapon;
- f. whether the reporting party is a minor;
- g. whether the college possesses other means to obtain relevant evidence of the sexual misconduct or Prohibited Conduct (e.g., security cameras or personnel, physical evidence); and
- h. whether the report reveals a pattern of perpetration (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group.

The Title IX Coordinator will make and document this determination, in consultation with legal counsel.

Regardless of whether the Complainant chooses to file or participate in a Formal Complaint, the Title IX Coordinator will assist the Complainant with reasonable and available accommodations, which may include academic, housing, transportation, employment, and other accommodations. (See, SMP, Supportive Measures, Section XVI.A.) Supportive measures provided to the Complainant may not unreasonably burden the Respondent.

Where no Formal Complaint has been filed and a requested supportive measure impacts the Respondent, the Title IX Coordinator will, with the Complainant's consent, provide Respondent with written notice of the report, which includes, as known, the date, time, and location of the alleged Prohibited Conduct and the underlying factual allegations, including the identity of the Complainant. Therefore, certain supportive measures may not be available if the Complainant wishes to maintain anonymity.

Where the Complainant declines to participate in an investigation, the college's ability to meaningfully investigate and respond to a report may be limited.

iii. Where the College Determines That the Complainant's Request(s) Can Be Honored

Where the Title IX Coordinator determines that the college can honor the Complainant's request that no Formal Complaint be pursued under these procedures, the college may nevertheless take other appropriate steps designed to eliminate the reported Prohibited Conduct, prevent its recurrence, and address its effects on the Complainant and the college community. Those steps may include offering the Complainant reasonable and available accommodations, conducting targeted prevention and awareness training, and/or providing or imposing other supportive measures tailored to the circumstances.

The Complainant may later choose to pursue a Formal Complaint within the time limits for filing a Formal Complaint under these procedures.

Upon receipt of new or additional information, the Title IX Coordinator may reconsider the Complainant's request that no Formal Complaint be pursued under these procedures and initiate the resolution process, as explained directly below.

iv. Where the College Determines That the Complainant's Request(s) Cannot Be Honored

Where the Title IX Coordinator determines that the college cannot honor the Complainant's request that no Formal Complaint be pursued under these procedures, the Title IX Coordinator will promptly initiate the resolution process under these procedures by making a signed, written Formal Complaint on behalf of the college. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a Complainant or otherwise a party.

The Title IX Coordinator will notify the Complainant that the college intends to proceed with a Formal Complaint and will take immediate action as necessary to protect and assist the Complainant. The Title IX Coordinator will make reasonable efforts to protect the privacy of the Complainant. However, typically, the Complainant's identity would have to be disclosed as part of the college's investigation.

The Complainant is not required to participate in any proceedings that follow but will be treated as the Complainant in the process and will receive all required communications and opportunities to participate in the investigation and adjudication. However, if the Complainant declines to participate in an investigation and/or the adjudicative process under these procedures, the college's ability to investigate meaningfully and respond to a report of Prohibited Conduct may be limited.

B. Formal Complaints

The college intends that investigations be completed thoroughly but as promptly as possible.

The timeframe for this process begins with the filing of a Formal Complaint. The process [not including an appeal] will be concluded within a reasonably prompt manner, and no longer than ninety (90) business days [includes Mondays-Fridays, excluding official federal and state holidays] after the filing of the Formal Complaint, provided that the process may be extended for a good reason, including but not limited to the absence or illness of a process administrator, such as the investigator or hearing officer, party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

1. Filing a complaint: All formal complaints under this policy may be made in writing or in person by the reporting party. Complaints may be submitted in the following manner:
 - i. [Online](#)
 - ii. To the Title IX Coordinator, available from 9 a.m. – 5 p.m., Monday through Friday, at 617-333-2212.

The reporting party should contact Public Safety immediately if facing any immediate threat or danger, particularly if weapons were involved.

2. Filing of formal complaint by the college: In the absence of a formal complaint, as noted above, the college reserves the right to initiate a complaint.
3. Notice to Complainant: The person making a complaint under this policy is notified in writing that the complaint has been received, who will be investigating the complaint, and what to expect during the investigation process, including a proposed timeline. The reporting party is also informed of the right to contact law enforcement authorities concerning the complaint.
4. Notice to Respondent: The person accused of misconduct under this policy is notified in writing and in person (if feasible) of the complaint, who will be investigating the complaint, and what to expect during the investigation process, including a proposed timeline. The Respondent is provided with a copy of the written complaint or summary of a complaint that is made orally to the persons identified above.
5. Cross-complaints: Any cross-complaint filed by a responding party will be addressed in a manner to be determined by the Title IX Coordinator, who shall consider whether the cross-complaint deals with a fact pattern relevant to that alleged by the reporting party and should be considered within the same investigation. The Title IX Coordinator will also consider the timing of the cross-complaint and whether the investigation of the cross-complaint may delay timely resolution of the complaint. Any cross-complaint that is filed in bad faith or is frivolous will be considered retaliation against the reporting party who filed the original complaint, and, in the discretion of the Title IX Coordinator, will be addressed as a separate violation of the policy or of student code of conduct, student grievance procedure, faculty legislation, or staff employment processes, and may subject the responding party to potential sanctions.

C. Informal Resolution of a Formal Complaint

At any time after a Formal Complaint has been filed and at any time in the investigation and decision-making process, the parties may seek to resolve a report of Prohibited Conduct through Informal Resolution, an administrative process.

Participation in an informal resolution process is entirely voluntary; the Title IX Coordinator will neither pressure nor compel either party to participate in the process or to agree to any specific terms.

In every case, the Title IX Coordinator has discretion to determine whether the matter is appropriate for Informal Resolution and to determine the appropriate terms. However, pursuant to Massachusetts law, mediation or informal resolution, even if voluntary, may not be used to resolve complaints of sexual assault or sexual coercion, including rape and fondling.

If the parties agree to participate in an informal resolution process the Title IX Coordinator will:

1. provide to the parties a written notice disclosing
 - i. the allegations;
 - ii. the requirements of the informal resolution process, including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations;
 - iii. that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the investigation process with respect to the formal complaint; and
 - iv. any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;
2. obtain the parties' voluntary, written consent to the informal resolution process; and
3. not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

The following additional conditions apply to this process:

1. Informal resolution will not include face-to-face meetings between the Complainant and the Respondent.
2. The parties are strongly encouraged, although not required, to consult with their advisor and any support persons during the entire Informal Resolution process.
3. If the process is terminated for any reason, the matter will be resolved pursuant to the Formal Complaint resolution process under these procedures. For this reason, the investigator will not participate in the informal resolution process.
4. The Title IX Coordinator will oversee the informal resolution process and will have access to all college and investigation records in the matter, including any records or reports prepared during an investigation.
5. If both parties are satisfied with the Title IX Coordinator's recommendation, the matter will be resolved with a written agreement.
6. The Title IX Coordinator will prepare an Informal Resolution agreement. Such terms may include but are not limited to implementation of any sanctions or remedies that could be imposed after a finding of responsibility is reached under these proceedings.

7. The Title IX Coordinator will provide each party, separately, with a copy of the proposed agreement for the party to review, sign, and return.
8. Once a party has returned the signed agreement to the Title IX Coordinator, the party has two (2) business days to reconsider and withdraw from the agreement by notifying the Title IX Coordinator in person or in writing.
9. Within the two (2) business days, if either party withdraws from the agreement, the matter would be returned for resolution of the Formal Complaint.
10. After the two (2) business days, if neither party withdraws, the terms of the agreement will become effective and the Title IX Coordinator will promptly notify both parties in writing that the agreement is final.
11. Once the agreement is effective, the parties may not appeal the agreement. The parties are expected to honor and comply with the terms of the Informal Resolution agreement. Noncompliance may be subject to proceedings under the Campus Code of Conduct or disciplinary procedures for faculty and staff.
12. If the process is terminated and the matter resolved pursuant to the Formal Complaint resolution process, neither the Title IX Coordinator nor the parties will disclose to the decision-maker or the Appeal Panel either the fact that the parties had participated in the Informal Resolution process or any information learned during the process.

D. Investigation Procedure

1. Investigator: The Title IX Coordinator will assign a single external investigator to conduct an investigation of the complaint. The external investigator will be a neutral party outside of the college, usually an attorney, who is trained and experienced in conducting Title IX investigations and the dynamics of sexual misconduct and assault and is trained in the college's policies and procedures.

The Complainant or the Respondent may submit a written request to the Title IX Coordinator to contest the external investigator, if there are reasonable articulable grounds to suspect bias, conflict of interest, or an inability to be fair and impartial. This challenge must be raised within four (4) business days of receipt of the notice of investigation. All objections must be raised prior to the commencement of the investigation. The Title IX Coordinator will make the determination whether to seek an alternative external investigator.

The college also reserves the right to appoint a single investigator or two investigators from within or outside the college community to conduct the investigation where warranted, as determined in the sole discretion of by the Title IX Coordinator, in consultation with legal counsel.

2. Investigation: The Complainant and Respondent shall each be interviewed by the investigator and may have an advisor with them for the meeting. The investigator, in consultation with the Title IX Coordinator, may, in their discretion, tape-record interviews

with the consent of the interview subjects. No other individual is permitted to record interviews or other proceedings. Both parties may present documents, the names of witnesses, and suggested specific questions to be posed to the parties or witnesses by the investigator. The Respondent may not be present for the Complainant's interview unless the reporting party consents, and vice versa. Both parties shall have the opportunity to respond to statements made by others. The investigator may also interview other witnesses or consider other evidence as they deem appropriate, subject to the following:

- i. A party's medical or mental health records are confidential under law. If a party voluntarily decides to share such records with the investigator, the relevant portions of the records will be shared with the opposing party and included in the investigation report.
- ii. The investigator shall have the discretion to bar the admission of evidence that is deemed to be more prejudicial than probative.
- iii. Opinions of expert witnesses are not admissible in the investigation. This includes but is not limited to findings prepared by an individual administering a lie detector test to a party or witness.
- iv. Prior sexual history of a Complainant: In general, a Complainant's prior sexual history is not relevant to an investigation under this policy and will not be considered by investigators or decision-makers unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent. The mere fact of a current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent, nor does it preclude a finding of responsibility with respect to the responding party.
- v. Pattern evidence by a Respondent. Where there is evidence of a pattern or conduct similar in nature by the Respondent, either prior to or subsequent to the conduct in question, regardless of whether there has been a finding of responsibility, this information may be deemed relevant and probative to the determination of responsibility and/or assigning of a sanction. The determination of relevance will be based on an assessment of whether the previous incident was substantially similar to the present allegation or information and indicates a pattern of behavior and substantial conformity with that pattern by the responding party.

3. Review of the Final Investigative Record and Draft Report

Upon completion of the investigation, a draft report and investigative record will be made available to the parties to inspect and review in hard copy or electronic format. The college is not under an obligation to use any specific process or technology to provide the evidence and shall have the sole discretion in terms of determining format and any restrictions or limitations on access.

The investigative record shall include:

- i. Written summaries or transcripts (but not audio files) of all interviews by the investigator with the parties and any witnesses
- ii. Copies of any documents, electronic records, and media and photographs or descriptions of physical materials collected during the course of the investigation, except those that are excluded pursuant to Section II.D.2, whether or not the investigator intends to rely on such information in the investigative report and whether or not such evidence is inculpatory or exculpatory

The parties will have ten (10) business days to inspect and review the evidence and draft report and submit a written response by email to the investigator. Parties may request a reasonable extension to this deadline.

This response may include:

- i. provision of additional evidence;
- ii. comments about content, including requests for redaction;
- iii. requests for additional meetings with the investigator;
- iv. requests for the investigator to conduct further investigation and/or questioning of additional witnesses; and
- v. any objections to the relevance of certain evidence.

The Title IX Coordinator will provide copies of the parties' written responses, including any additional evidence, to the investigator, and to all parties and their advisors.

The investigator will consider the parties' written responses before completing the Investigative Report.

The parties and their advisors must sign an agreement not to disseminate any of the evidence subject to inspection and review or responses, or to use such evidence for any purpose unrelated to the non-Title IX procedure. The parties and their advisors agree not to photograph or otherwise copy the evidence.

The investigator has discretion whether to conduct any additional requested meetings, interviews, or questioning identified in the parties' responses.

4. Investigator's Report: In a timely manner, the investigator shall submit a final written report of the investigation to the Title IX Coordinator together with the parties' responses to the draft report, if any. The report shall describe the investigation and all relevant evidence obtained in it, and shall recommend one of the following findings:
 - i. the Respondent is responsible for violating this policy;
 - ii. the Respondent is not responsible for violating this policy; or
 - iii. there is insufficient information to determine whether the Respondent is responsible for violating this policy.

The written investigation report will summarize the information gathered, synthesize the areas of agreement and disagreement between the parties and any supporting information or accounts, and analyze the relevant facts determined through the investigation, referencing any supporting documentation or statements. The investigation report may include summaries of interviews with the Complainant, the Respondent, third-party witnesses, and any other individuals with relevant information, credibility assessments of the parties and witnesses, photographs of relevant sites or physical evidence, electronic records, and forensic evidence.

The report will provide specific support for the recommended finding based on information obtained during the investigation. The investigator shall arrive at the conclusions based on a preponderance of evidence, meaning whether it is more likely than not that this policy was violated. Sanctions shall not be addressed in the investigator's report.

5. Response to Investigator's Report: The parties will have ten (10) business days to inspect and review the evidence and final report and submit a written response to the investigator. Parties may request a reasonable extension to this deadline. The response shall be appended to the final report and provided to the appropriate decision-maker. The parties will also be requested to provide an Impact/Mitigation Statement, to be reviewed by the decision-maker only after a finding of responsibility is made.

E. Final Decision on Responsibility and Sanctions

1. Decision-Makers

At the completion of an investigation, the Investigator's final report, with the parties' responses, will be provided to the following individuals to determine responsibility and impose sanctions:

- i. The Provost (where a faculty member is the respondent)

- ii. The Associate Vice President of Student Affairs (where a student is the respondent)
- iii. The Vice President for Human Resources (where a non-faculty staff member is the respondent)

2. Duties of Decision-Maker

The decision-maker may choose, in their discretion, to meet with the parties, individually, or with any witnesses, or the investigator.

Within fifteen (15) business days after receiving the final investigation report, the decision-maker will make one of the following determinations about responsibility using the preponderance of the evidence standard:

- i. the Respondent is responsible for violating this policy;
- ii. the Respondent is not responsible for violating this policy; or
- iii. there is insufficient information to determine whether the Respondent is responsible for violating this policy.

If a Respondent is determined to be responsible for violating the policy, the decision-maker may impose sanctions.

3. Written Determination Regarding Responsibility and Sanctions

The written determination regarding responsibility and sanctions will be issued by the Title IX Coordinator simultaneously to all parties through their institution email account, or other reasonable means as necessary. The determination will include:

- i. Identification of the allegations potentially constituting Prohibited Conduct
- ii. Findings of fact supporting the determination
- iii. Conclusions regarding which section of the Sexual Misconduct Policy, if any, the Respondent has or has not violated
- iv. For each allegation, a statement of, and rationale for, a determination regarding responsibility and any sanctions imposed
- v. The college's procedures and the permitted reasons for the Complainant and Respondent to appeal (described below in "Appeal")

4. List of Sanctions. Potential sanctions are identified in Appendix A to the Sexual Misconduct Policy.

F. Appeal of a Finding of Responsibility and Sanctions

Each party may appeal a final determination of responsibility and imposition of sanctions. To appeal, a party must submit their written appeal within ten (10) business days of being notified of the decision, indicating the grounds for the appeal. The appealing party may request an extension of time by submitting a request to the Title IX Coordinator explaining the reason(s) for the request. The appellate reviewer will have discretion to grant such a request upon a finding of good cause for the delay. Failure to submit an appeal within the ten (10) business days or any approved extension constitutes waiver of the right to appeal.

All appeals will be heard by one Appellate Reviewer:

1. For Faculty Respondents—the President
2. For Staff Respondents—the President
3. For Student Respondents—the Vice President of Student Affairs

All appeals will be based solely upon the investigative record and final Written Determination Regarding Responsibility and Sanctions. When relevant to a stated ground for appeal, the record may be supplemented on appeal with evidentiary materials excluded or redacted from the investigative record or newly discovered evidence.

Appeals may be brought only upon one or more of the following grounds:

1. Procedural irregularity that affected the outcome of the matter
2. New evidence that was not reasonably available at the time the determination regarding responsibility was made, which could affect the outcome of the matter
3. Sanctions were disproportionate for the violation found.

The appealing party commences an appeal by submitting a written statement to the Title IX Coordinator. The appeal statement must set forth:

1. the determination(s) being appealed;
2. the specific ground(s) for the appeal; and
3. the facts supporting the grounds.

A copy of the appeal statement will be provided to the other party, who within ten (10) business days may submit a written response to the Title IX Coordinator. The response should address both the specific ground(s) for appeal set forth in the appealing party's statement and the specific facts asserted by the appealing party.

The decision-maker will establish a reasonable schedule for issuing a written decision, typically no later than fifteen (15) business days after receipt of any responses to the appeal.

The decision will be final and binding on all parties. Any decision will be based solely upon the investigative record, the final Written Determination, and, in appropriate cases, a showing of new evidence relevant to the ground for appeal. The decision shall include the rationale for the decision.

The Appellate Reviewer may affirm the decision of the decision-maker or sustain any of the above-specified grounds for appeal, in which case the Appellate Reviewer may:

1. reverse or modify a finding of responsibility and/or sanction;
2. remand a case to the investigator or decision maker for clarification or reconsideration consistent with the appeal decision, if doing so would assist with a timely, practicable, and efficient resolution of the case; or
3. remand a case for a new or additional investigation, to either the original investigator or to a new investigator.

The final written determination of the appeal will be issued simultaneously to all parties through their college email account, or other reasonable means as necessary.

G. Withholding Degrees

At the discretion of the Vice President of Student Affairs and Dean of Students or their designee, a student may not register for classes, participate in room draw, participate in Commencement, or receive a degree if they have not completed or complied with sanctions imposed under this process, or if an investigation is in process. The college may withhold awarding a degree otherwise earned until the completion of these procedures, including the completion of any sanctions imposed.

H. Enforcement of Sanctions

The Title IX Coordinator will be responsible for ensuring that any sanctions imposed are implemented and completed. This may require contacting college employees in a position to enforce or monitor sanctions, such as members of Public Safety, the Director of Residence Life & Housing, or an employment supervisor. In contacting such persons, the Title IX Coordinator will only disclose as much information as is necessary to ensure that the sanctions are enforced or monitored.

I. Implementation of Remedies

The Title IX Coordinator will be responsible for implementing any remedies they deem necessary and will take into consideration the Impact/Mitigation Statements submitted by the parties in doing so. Remedies may include the extension of supportive measures previously put in place, and shall be designed to provide equal access to the Complainant to the college's programs and activities. A decision to impose remedies is not appealable by either party. The Respondent shall be notified of the implementation of any remedies that affects the Respondent.

The implementation of remedies is not subject to appeal and is final.