

Procedures for Addressing Sexual Misconduct Involving a UConn Student Respondent: New Procedures as required by the Final Rule under Title IX dated May 19, 2020

On May 19, 2020, the U.S. Department of Education issued a Final Rule under Title IX of the Education Amendments of 1972 that:

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

See, 85 Fed. Reg. 30026 (May 19, 2020). The full text of the Final Rule and its extensive Preamble are available here: <http://bit.ly/TitleIXReg>. Based on the Final Rule, UConn will implement the following procedures for matters involving UConn students as the respondent, effective August 14, 2020.

Under the Final Rule, UConn must comply with both the geographic scope of its authority to act under Title IX and the types of “sexual harassment” that it must subject to its Title IX investigation and resolution process. Please note that all types of sexual harassment will be investigated, however, **only** incidents falling within the Final Rule’s definition of sexual harassment will if appropriate, be brought to a live hearing, including cross-examination, through the Student Title IX procedures described below.

Determining Jurisdiction

The Office of Community Standards will determine if the information provided in the formal complaint should launch the Title IX Sexual Harassment investigation and resolution process. The Process will apply when all of the following elements are met, in the reasonable determination of the Title IX Coordinator or designee:

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

If all of the elements are met, UConn will investigate the allegations according to the Student Title IX procedures.

To the extent that alleged misconduct falls outside the Title IX Sexual Harassment definition outlined in the *Policy Against Discrimination, Harassment and Related Interpersonal Violence*, or misconduct falling outside the Title IX Sexual Harassment definition is discovered in the course of an investigation, the institution retains authority to investigate and adjudicate the allegations under the policies and procedures defined within the *Responsibilities of Community Life: The Student Code* and through a separate resolution options.

These procedures for addressing sexual misconduct involving UConn student respondents will become effective on August 14, 2020, and will only apply to formal complaints of sexual harassment brought on or after August 14,

2020. Complaints brought prior to August 14, 2020 will be investigated and adjudicated according to the previous resolution options as stated in The Student Code if a case is not complete by that date.

Definitions

Covered Sexual Harassment

For the purposes of these procedures for addressing sexual misconduct involving UConn student respondents, “covered sexual harassment” includes any conduct on the basis of sex that satisfies one or more of the following:

1. An employee conditioning educational benefits on participation in unwelcome sexual conduct (i.e., quid pro quo);
2. Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the educational institution’s education program or activity;
3. Sexual assault (as defined in the Clery Act¹), which includes any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent;
4. Dating violence (as defined in the Violence Against Women Act (VAWA) amendments to the Clery Act²), which includes any violence committed by a person: (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship; (ii) The type of relationship; (iii) The frequency of interaction between the persons involved in the relationship.
5. Domestic violence (as defined in the VAWA amendments to the Clery Act³), which includes any 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 Connecticut domestic or family violence laws 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 Connecticut
6. Stalking (as defined in the VAWA amendments to the Clery Act⁴), meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to-- (A) fear for their safety or the safety of others; or (B) suffer substantial emotional distress.

¹ **Sexual assault** means an offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI’s Uniform Crime Reporting system. Per the National Incident-Based Reporting System User Manual from the FBI UCR Program, a sex offense is any act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.

² **Dating Violence** means violence committed by a person Who is or has been in a social relationship of a romantic or intimate nature with the victim and The existence of such a relationship shall be based on the reporting party’s statement and with consideration of the length of the relations

³ **Domestic 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 the reporting party’s statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

⁴ **Stalking** is defined as in a course of conduct directed at a specific person that would cause a reasonable person to—Fear for the person’s safety or the safety of others; or suffer substantial emotional distress.

Note that conduct that does not meet one or more of these criteria may still be prohibited under the Student Code: *Responsibilities of Community Life: The Student Code*.

Education Program or Activity

For the purposes of these procedures for addressing sexual misconduct involving UConn student respondents, a UConn “education program or activity” includes:

- Any on-campus premises
- Any off-campus premises that UConn has substantial control over. This includes buildings or property owned or controlled by a recognized student organization.
- Activity occurring within computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of UConn’s programs and activities over which the UConn has substantial control.

Formal Complaint

For the purposes of these procedures for addressing sexual misconduct involving UConn student respondents , “formal complaint” means a document – including an electronic submission - filed by a complainant with a signature or other indication that the complainant is the person filing the formal complaint, or signed by the Title IX Coordinator, alleging sexual harassment against a student respondent about conduct within UConn's education program or activity and requesting initiation of these procedures to investigate the allegation of sexual harassment.

Complainant

For the purposes of these procedures for addressing sexual misconduct involving UConn student respondents , Complainant means any individual who has reported being or is alleged to be the victim of conduct that could constitute covered sexual harassment as defined under the *Policy Against Discrimination, Harassment and Related Interpersonal Violence*. Additionally, the complainant must be participating in or attempting to participate in a University education program or activity at the time the complaint is filed.

Respondent

For the purposes of these procedures for addressing sexual misconduct involving UConn student respondents, Respondent means any individual who has been reported to be the perpetrator of conduct that could constitute Title IX Sexual Harassment as defined in the *Policy Against Discrimination, Harassment and Related Interpersonal Violence*.

Advisor

Advisor is defined as one individual (who may be an attorney) selected by a party or assigned by the Office of Community Standards to assist the party throughout the proceedings set forth in these procedures. The Office of Community Standards will copy a party’s advisor on the investigative report. The advisor also will participate in the hearing. The advisor may not participate in the proceedings in lieu of the party; the party must maintain

meaningful participation in all proceedings. The advisor must maintain respectful and professional decorum in all proceedings; failure by the advisor to do so may result in the Office of Community Standards excluding the advisor from participation. The Office of Community Standards maintains discretion to determine whether exclusion of an advisor is warranted. If an advisor is excluded from participation in the hearing, the Office of Community Standards will appoint an advisor for the party.

Support Person

In addition to one advisor as set forth above, parties and witnesses are permitted to also have one support person accompany them to any meeting with the Office of Community Standards or proceeding under these procedures. An individual who is reasonably likely to participate as a witness in the investigation or hearing may not serve as a support person during any substantive interview or in the hearing pursuant. A support person's role is to offer comfort and guidance to a party or witness; a support person may not actively participate in any proceeding. A support person's failure to maintain respectful and professional decorum and to limit their conduct at any meeting or proceeding to the scope of the role as described herein may result in the Office of Community Standards excluding the support person from any meeting or proceeding. The Office of Community Standards maintains discretion to determine whether exclusion of a support person is warranted. The party or witness is responsible for arranging their support person's attendance at any meeting or proceeding. It is within the Office of Community Standards' discretion whether to reschedule a meeting or proceeding or extend other timelines in the investigation process due to a support person's unavailability.

Disability Accommodations

These procedures do not alter any institutional obligations under federal disability laws including the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Parties may request reasonable accommodations for disclosed disabilities to the Investigating Student Conduct Officer (ISCO) at any point before or during the investigation or resolution process that do not fundamentally alter the Process. The ISCO or designee will not affirmatively provide disability accommodations that have not been specifically requested by the Parties, even where the Parties may be receiving accommodations in other institutional programs and activities. Students seeking an accommodation must contact the Center for Students with Disabilities who will make the determination regarding the request and notify the appropriate parties.

Non-Investigatory Measures Available To UConn Students

Supportive Measures

Complainants (as defined above), who report allegations that could constitute covered sexual harassment under this policy, and respondents (as defined above) have the right to receive supportive measures from UConn regardless of a formal complaint. Supportive measures are non-disciplinary and non-punitive and may include, but are not limited to:

- *Counseling*
- *extensions of deadlines or other course-related adjustments*
- *modifications of work or class schedules*
- *restrictions on contact between the parties (no contact orders)*

- *changes in work or housing locations*
- *leaves of absence*
- *increased security and monitoring of certain areas of the campus*

Emergency Removal

UConn retains the authority to remove a respondent from a University program or activity on an emergency basis, where UConn (1) undertakes an individualized safety and risk analysis and (2) determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Title IX Sexual Harassment, as defined in the *Policy Against Discrimination, Harassment and Related Interpersonal Violence*, justifies a removal.

If UConn determines such removal is necessary, the respondent will be provided notice and an opportunity to challenge the decision immediately following the removal.

The Title IX Sexual Harassment Investigation and Resolution Process

Filing a Formal Complaint

The timeframe for the student Title IX Sexual Harassment investigation process begins with the filing of a Formal Complaint. The investigation will be concluded within a reasonably prompt manner- 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 of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities. The procedure for applying for extensions is described below.

To file a Formal Complaint, a complainant must provide a written, signed complaint describing the facts alleged. Complainants are only able to file a Formal Complaint under this Policy if they are currently participating in, or attempting to participate in, the education programs or activities of UConn, including as an employee. For complainants who do not meet this criteria, UConn will utilize existing policy in <https://titleix.uconn.edu/title-ix-at-uconn/uconn-policies/>.

If a complainant does not wish to make a Formal Complaint, the Title IX Coordinator may determine a Formal Complaint is necessary. UConn will inform the complainant of this decision in writing, and the complainant need not participate in the process further but will receive all notices issued under this Policy and Process.

Nothing in the *Policy Against Discrimination, Harassment and Related Interpersonal Violence* or the *Responsibilities of Community Life: The Student Code* prevents a complainant from seeking the assistance of state or local law enforcement alongside the appropriate on-campus process.

Mandatory Dismissal

If any one of the elements (See Determining Jurisdiction⁵) are not met, the Office of Community Standards will notify the parties that the Formal Complaint is being dismissed for the purposes of the Title IX Sexual Harassment Investigation and resolution process. Each party may appeal this dismissal using the procedure outlined in “Appeals,” below. However, the Office of Community Standards is permitted to review the alleged behavior through an alternative investigation and resolution process as outlined here: <https://community.uconn.edu/>.

Discretionary Dismissal

The Office of Community Standards may dismiss a Formal Complaint , or any specific allegations raised within that Formal Complaint, at any time during the investigation or hearing, if:

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

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

Notice of Dismissal

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

Notice of Allegations

The Office of Community Standards will provide a written Notice of Allegations to the Complainant (if applicable) and Respondent(s) regarding the allegations and information about the grievance process. If, during the course of the investigation, the Office of Community Standards receives information of additional allegations concerning the Respondent(s), the Office of Community Standards may supplement the Notice of Allegations, or may address the additional allegations through a separate process under the applicable procedures.

Delays

Each party may request a one-time delay in the Grievance Process of up to five (5) days for good cause (granted or denied in the sole judgment of the Title IX Coordinator, Director of Community Standards, or designee) provided

⁵The conduct is alleged to have occurred on or after August 14, 2020, the conduct is alleged to have occurred in the United States, the conduct is alleged to have occurred in UConn’s education program or activity; and the alleged conduct, if true, would constitute covered sexual harassment as defined in this policy.

that the requestor provides reasonable notice and the delay does not overly inconvenience other parties. The Director of Community Standards or designee will have sole judgement to grant further pauses in the process.

Investigation

General Rules of Investigations

The Investigating Student Conduct Officer (ISCO) will perform an investigation under a reasonably prompt timeframe of the conduct alleged to constitute covered sexual harassment after issuing the Notice of Allegations. UConn and not the parties, has the burden of proof and the burden of gathering evidence, i.e. the responsibility of showing a violation of this Policy has occurred. This burden does not rest with either party, and either party may decide not to share their account of what occurred or may decide not to participate in an investigation or hearing. This does not shift the burden of proof away from UConn and does not indicate responsibility.

UConn cannot access, consider, or disclose medical records without a waiver from the party (or parent, if applicable) to whom the records belong or of whom the records include information. UConn will provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence, (i.e. evidence that tends to prove and disprove the allegations) as described below.

Assignment of Advisors

Within seven (7) calendar days of the ISCO's issuance of the Notice of Allegations, the parties may identify an advisor of their choice to accompany them to any meeting or proceeding under these procedures. If a party indicates that they want the Office of Community Standards to assign an advisor to them, or if a party does not select an advisor by 5:00 PM (EST) on the seventh day following the Office of Community Standards' issuance of the Notice of Allegations, the Office of Community Standards will assign an advisor.

Inspection and Review of Evidence

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

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

1. Evidence that is relevant, even if that evidence does not end up being relied upon by the institution in making a determination regarding responsibility;
2. Inculpatory or exculpatory evidence (i.e. evidence that tends to prove or disprove the allegations) that is directly related to the allegations, whether obtained from a party or other source.

All parties must submit any evidence they would like the investigator to consider prior to when the parties' time to inspect and review evidence begins. See, 85 Fed. Reg. 30026, 30307 (May 19, 2020).

The institution will send the evidence made available for each party and each party's advisor, if any, to inspect and review. The parties will have ten (10) calendar days to inspect and review the evidence and submit a written

response via university email to the investigating student conduct officer (ISCO). The ISCO will consider the parties' written responses before completing the Investigative Report.

The ISCO will provide copies of the parties' written responses to the investigator to all parties and their advisors, if any. See, 85 Fed. Reg. 30026, 30307 (May 19, 2020). Any evidence subject to inspection and review will be available at any hearing, including for purpose of cross-examination.

Relevant evidence and questions

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

"Relevant" evidence and questions do not include the following types of evidence and questions, which are deemed "irrelevant" at all stages of the Title IX Sexual Harassment Grievance Process:

- Evidence and questions about the complainant's sexual predisposition or prior sexual behavior unless:
 - They are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or
 - They concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. 34 C.F.R. § 106.45(6)(i).
- Evidence and questions that constitute, or seek disclosure of, information protected under a legally-recognized privilege.
- Any party's medical, psychological, and similar records unless the party has given voluntary, written consent. 85 Fed. Reg. 30026, 30294 (May 19, 2020).

Investigative Report

The Investigating Student Conduct Officer (ISCO) will create an Investigative Report that summarizes relevant evidence, and may make recommendations regarding factual findings and credibility analyses. The ISCO will provide that report to the parties and their advisors at least ten (10) business days prior the hearing via the electronic communication for each party's review and written response.

Hearing

General Rules of Hearings

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

All proceedings will be recorded through Webex Events. That recording or transcript will be made available to the parties for inspection and review upon request.

Continuances or Granting Extensions

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

Participants in the live hearing⁶

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

Complainant and Respondent (The Parties)

- The parties cannot waive the right to a live hearing.
- The institution may still proceed with the live hearing in the absence of a party, and may reach a determination of responsibility in their absence.
- UConn will not threaten, coerce, intimidate or discriminate against the party in an attempt to secure the party's participation. See 34 C.F.R. § 106.71; see also 85 Fed. Reg. 30026, 30216 (May 19, 2020).
- If a party does not submit to cross-examination, the Hearing Officers may rely on prior statements made by that party in reaching a determination regarding responsibility.
- The Hearing Officers cannot draw an inference about the determination regarding responsibility based solely on a party's absence from the live hearing or refusal to answer cross examination or other questions. See 34 C.F.R. §106.45(b)(6)(i).
- The parties shall be subject to UConn's Rules of Decorum.

The Hearing Officers and Hearing Chair

- The hearing body will consist of a panel of 2 decision makers known as Hearing Officers and 1 Hearing Chair who is not a decision maker.
- No member of the hearing body will also have served as the Title IX Coordinator, Title IX investigator, or advisor to any party in the case, nor may any member of the hearing body serve on the appeals body in the case.
- No member of the hearing body will have a conflict of interest or bias in favor of or against complainants or respondents generally, or in favor or against the parties to the particular case.
- The hearing body will be trained on topics including how to serve impartially, issues of relevance, including how to apply the rape shield protections provided for complainants, and any technology to be used at the hearing.
- The parties will have an opportunity to raise any objections regarding a decision-maker's actual or perceived conflicts of interest or bias at the commencement of the live hearing.

⁶ On August 23, 2021, the Department of Education published guidance vacating 34 C.F.R. § 106.45(b)(6)(i) that prohibits a decision-maker from relying on statements that are not subject to cross-examination during the hearing. As stated in this guidance, "In practical terms, a decision-maker at a postsecondary institution may now consider statements made by parties or witnesses that are otherwise permitted under the regulations, even if those parties or witnesses do not participate in cross-examination at the live hearing, in reaching a determination regarding responsibility in a Title IX grievance process." <https://www2.ed.gov/about/offices/list/ocr/docs/202108-titleix-VRLC.pdf>

Advisor of choice

- The parties have the right to select an advisor of their choice, who may be, but does not have to be, an attorney.
- The advisor of choice may accompany the parties to any meeting or hearing they are permitted to attend, but may not speak for the party, except for the purpose of cross-examination.
- In addition to selecting an advisor to conduct cross-examination, the parties may select a support person as defined above, who may accompany the parties to any meeting or hearing they are permitted to attend, but may not speak for the party.
- The parties are not permitted to conduct cross-examination; it must be conducted by the advisor. As a result, if a party does not select an advisor, the institution will select an advisor to serve in this role for the limited purpose of conducting the cross-examination at no fee or charge to the party.
- The advisor is not prohibited from having a conflict of interest or bias in favor of or against complainants or respondents generally, or in favor or against the parties to the particular case.
- The advisor is not prohibited from being a witness in the matter.
- If a party does not attend the live hearing, the party's advisor may appear and conduct cross-examination on their behalf. 85 Fed. Reg. 30026, 30340 (May 19, 2020).
- If neither a party nor their advisor appear at the hearing, UConn will provide an advisor to appear on behalf of the non-appearing party. See, 85 Fed. Reg. 30026, 30339-40 (May 19, 2020).
- Advisors shall be subject to the institution's Rules of Decorum, and may be removed upon violation.

Witnesses

- Witnesses cannot be compelled to participate in the live hearing, and have the right not to participate in the hearing free from retaliation. See, 85 Fed. Reg. 30026, 30360 (May 19, 2020).
- If a witness does not submit to cross-examination, as described below, the Hearing Officers may rely on any statements made by that witness in reaching a determination regarding responsibility.
- Witnesses shall be subject to UConn's Rules of Decorum.

Hearing Procedures

For all live hearings conducted under this Title IX resolution process, the procedure will be as follows:

- The Hearing Chair will open and establish rules and expectations for the hearing;
- The Parties will each be given the opportunity to provide opening statements;
- The Hearing Officers will ask questions of the Parties and Witnesses;
- Parties will be given the opportunity for live cross-examination after the Hearing Officers conducts its initial round of questioning; During the Parties' cross-examination, Hearing Chair will have the authority to pause cross-examination at any time for the purposes of asking Hearing Officer's own follow up questions; and any time necessary in order to enforce the established rules of decorum.
- Should a Party's Advisor choose not to cross-examine a Party or Witness, the Party shall affirmatively waive cross-examination through a written or oral statement to the Hearing Officer. A Party's waiver of

cross-examination does not eliminate the ability of the Hearing Officer to use statements made by the Party.

Live Cross-Examination Procedure

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

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

Review of Recording

The recording of the hearing will be available for review upon request by the parties. The recording of the hearing will not be provided to parties or advisors of choice.

Determination Regarding Responsibility

Standard of Proof

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

General Considerations for Evaluating Testimony and Evidence

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

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

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

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

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

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

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

The Final Rule requires that UConn allow parties to call character witnesses to testify. UConn does not provide for character witnesses in other proceedings. While the character witnesses will be allowed to testify and be crossed as required by the Final Rule, the Hearing Officers will be instructed to weigh the evidence presented as it relates to the matter addressed in the hearing.

The Final Rule requires that UConn admit and allow testimony regarding polygraph tests ("lie detector tests") and other procedures that are outside of standard use in academic and non-academic conduct processes. While the processes and testimony about them will be allowed to testify and be crossed as required by the Final Rule, the Hearing Officers will be instructed to afford lower weight to such processes relative to the testimony of fact witnesses.

Where a party or witness' conduct or statements demonstrate that the party or witness is engaging in retaliatory conduct, including but not limited to witness tampering and intimidation, the Hearing Officers may draw an adverse inference as to that party or witness' credibility.

Components of the Determination Regarding Responsibility

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

1. Identification of the allegations potentially constituting covered sexual harassment;
2. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
3. Findings of fact supporting the determination;
4. Conclusions regarding which section of the policy, if any, the respondent has or has not violated.
5. For each allegation:
 - a. A statement of, and rationale for, a determination regarding responsibility;

- b. A statement of, and rationale for, any disciplinary sanctions the recipient imposes on the respondent; and
 - c. A statement of, and rationale for, whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the recipient to the complainant; and
6. The recipient's procedures and the permitted reasons for the complainant and respondent to appeal (described below in "Appeal").

Timeline of Determination Regarding Responsibility

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

Finality

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

Appeals

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

The limited grounds for appeal available are as follows:

Except as required to explain the basis of new information, an appeal shall be limited to a review of the student case file. The audio recording of the administrative hearing shall be available for the appellate body for review as necessary. The review shall be for one or more of the following purposes:

- a. To determine whether the administrative hearing was conducted in conformity with prescribed procedures giving the complainant and investigating student conduct officer a reasonable opportunity to prepare and to present information that *The Student Code* was violated, and giving the respondent a reasonable opportunity to prepare and to present a response to those allegations.
- b. To determine whether the sanction(s) imposed were appropriate for the determined violation(s) of *The Student Code*.
- c. To consider new information, sufficient to alter a decision, or other relevant facts not brought out in the original hearing, because such information and/or facts were not known to the person appealing at the time of the original administrative hearing.
- d. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against an individual party, or for or against complainants or respondents in general, that affected the outcome of the matter.

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

If a party appeals, the institution will as soon as practicable notify the other party in writing of the appeal, however the time for appeal shall be offered equitably to all parties and shall not be extended for any party solely because the other party filed an appeal. Appeals should be submitted in electronic form provided in the hearing outcome notification. The form allows for attachments to be included.

Appeals will be decided by the appellate body who will be free of conflict of interest and bias, and will not serve as investigator, Title IX Coordinator, or hearing body or hearing chair in the same matter. Outcome of appeal will be provided in writing simultaneously to both parties, and include rationale for the decision.

Retaliation

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

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

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

Any intimidation, threats, coercion, or discrimination, for the purpose of interfering with any right or privilege secured by Title IX or its implementing regulations constitutes retaliation. This includes any charges filed against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but that arise from the same facts or circumstances as a report or complaint of sex discrimination or a report or Formal Complaint of sexual harassment.

Complaints alleging retaliation may be filed by contacting the Office of Community Standards or the Office of Institutional Equity.

Revised 10/8/2021