

Formal Grievance Protocol
As Required by the U.S. Department of Education Title IX Regulations
(34 C.F.R. § 106.45)
Effective August 17, 2021

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Formal Grievance Protocol

As required by the U.S. Department

This Protocol applies to all members of the Vanderbilt community and its terms supersede any contrary Vanderbilt policies pertaining to the investigation or adjudication of "sexual harassment" as defined in this Protocol.

Questions about the Protocol and its applicability to any alleged conduct may be directed to Vanderbilt's Title IX Coordinator, who oversees compliance with applicable non-discrimination policies, including this Protocol:

*Title IX Coordinator
110 21st Avenue South
Baker Building, Suite 975*

Sexual misconduct that does not satisfy the USDOE's jurisdictional requirement, such as off-campus behavior alleged to have an on-campus effect, may be addressed under alternative procedures, as provided in the Sexual Misconduct Policy, instead of this Protocol.

C. Other Definitions

The terms "Complainant" and "Respondent" are used throughout this Protocol as well as the Sexual Misconduct Policy. For purposes of this Protocol, a Complainant is an individual who is alleged to be the victim of conduct that could constitute sexual harassment. A Respondent is an individual alleged to be the perpetrator of conduct that could constitute sexual harassment. (§ 106.30.)

Other terms that are used in this Protocol, like Supportive Measures and Formal Complaint, are defined below. All relevant terms, including Consent and Incapacitation, are defined in the Sexual Misconduct Policy.

III. USDOE Statements of Equitable Treatment

A. As required by USDOE's Title IX Regulations, Vanderbilt's Formal Grievance Protocol treats Complainants and Respondents equitably by: (1) offering Supportive Measures (as defined below) to a Complainant, and (2) following a grievance process that complies with the procedural requirements of the Title IX Regulations before the imposition of any disciplinary sanctions against a Respondent. (§ 106.44(a); § 106.45(b)(1)(i).) Supportive Measures also may be offered as needed to Respondents and other members of the Vanderbilt community who may be affected by sexual harassment.

B. 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. (§ 106.30) They may be sought or provided before or after a Formal Complaint is filed, or where no Formal Complaint has been filed. Supportive Measures are designed to restore or preserve equal access to Vanderbilt's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the educational environment, or deter sexual harassment.

Supportive Measures may include, but are not limited to: access to on-campus counseling services and assistance in setting up an initial appointment, extensions of deadlines or other course-related adjustments (such as rescheduling of exams/assignments or providing alternative course or program completion options), modifications of work or class schedules (such as the ability to change work schedules, job assignments, job locations, or reporting lines; or the ability to transfer course sections or withdraw from a course), campus escort services for transit around campus (such as before and after work or between classes and activities), mutual restrictions on contact between the parties (such as Vanderbilt No-Contact Directives), changes in work or housing locations (such as changing residence hall or classroom assignment), student-requested leaves of absence, administrative leave, increased security and monitoring of certain areas of the campus, academic support services such as tutoring, and other similar measures.

Vanderbilt will keep any Supportive Measures provided to a Complainant or Respondent private, to the extent possible. Supportive Measures that affect other members of the Vanderbilt community (e.g., mutual No-Contact Directives, where the other party must be informed of the directive and its implications) may be disclosed to

facilitate implementation. The Title IX Coordinator is responsible for coordinating the effective implementation of Supportive Measures.

C. An individual's status as a Respondent will not be considered a negative factor during any process under this Protocol. Respondents are entitled to, and will receive the benefit of, a presumption that they are not responsible for the alleged conduct unless and until the process concludes and a determination regarding responsibility is issued. Similarly, a person's status as a Complainant, Respondent, or witness will not determine whether that person is deemed credible. (§ 106.45(b)(1)(ii-iv).)

D. Vanderbilt's Formal Grievance Process provides remedies to a Complainant only if the grievance process described in this Protocol results in a determination that the Respondent is responsible for sexual harassment. Remedies are designed to restore or preserve equal access to Vanderbilt's education program or activity and may include the same individualized services as Supportive Measures. Remedies may be disciplinary and punitive and may burden a Respondent. (§ 106.45(b)(1)(i).)

E. Title IX Coordinators, Investigators, decision-makers, and any person who facilitates an informal resolution

IX Regulations prevent Vanderbilt from administering a formal grievance process (including any informal or early resolution) that permits the imposition of any disciplinary sanctions or other actions against a Respondent. Supportive Measures, however, may still be given. (§ 106.44(a); § 106.45(b)(1)(i); see also § 106.8(c).) Accordingly, Vanderbilt strongly encourages Complainants to file a Formal Complaint, so that the required Formal Grievance Process can be followed.

- iii. After filing a Formal Complaint, a Complainant may withdraw their Formal Complaint at any time by providing written notice to the Title IX Coordinator. That withdrawal concludes the Formal Grievance Protocol process unless the Title IX Coordinator takes action under [Subsection A.iv.](#) immediately below. (See also [Subsection D.v.](#) below regarding permissive dismissal.)
- iv. A Title IX Coordinator may sign a Formal Complaint to initiate or continue the Formal Grievance Process, if necessary to fulfill Vanderbilt's duties under Title IX to not be deliberately indifferent to actual knowledge of sexual misconduct. Signing a Formal Complaint does not make a Title IX Coordinator a Complainant or otherwise a party. (§ 106.30.)
- v. Vanderbilt may, but is not required to, consolidate Formal Complaints arising out of the same factual circumstances in two scenarios:
 1. Where there is more than one Complainant or Respondent;
 2. Where a Formal Complaint has also been filed by the Respondent against the Complainant. (§ 106.45(b)(4).) In such cases, the Formal Grievance Process for a later-filed Formal Complaint may be consolidated into an earlier-filed process rather than re-start from the beginning (e.g., the new charges may be considered in the course of a pre-existing investigation).
 3. Vanderbilt may also, but is not required to, consolidate Formal Complaints and other complaints initiated under the Policy that arise out of the same factual circumstances so long as the consolidated complaint is resolved in accordance with the requirements of this Protocol.
- vi. Mandatory Dismissal (§ 106.45(b)(3)(i, iii).)
 1. If a Formal Complaint is filed, Vanderbilt will investigate its allegations.
 2. If the conduct alleged does not meet the Formal Grievance Protocol scope requirements in

- ii. If, at any point during the course of the investigation, Vanderbilt decides to investigate allegations that are not included in the original notice, it will provide notice of the additional allegations to the parties.

D. Investigation Procedure

- i. The Title IX Coordinator will appoint an Investigator to investigate the allegations subject to the Formal Grievance Process. The investigation may include, among other steps, interviewing the Complainant, the Respondent, and any witnesses; reviewing law enforcement investigation documents if applicable; reviewing relevant student or employment files; and gathering and examining other relevant documents, social media posts, and other evidence.

The Investigator will attempt to collect all relevant information and evidence. While the Investigator will have the burden of gathering evidence, it is crucial that the parties present evidence and identify witnesses to the Investigator so that they may be considered during the investigation. As described below in [Section IV.E.iii.3](#).

Vanderbilt's decision-makers will use the preponderance of the evidence standard. See also [Subsection D.i.](#) above.

2. Provide an equal opportunity for the parties to present witnesses and other relevant evidence. (§ 106.45(b)(5)(ii).)
3. Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence. (§ 106.45(b)(5)(iii).)
 - a. Vanderbilt does not prohibit any party from discussing their own experience. While Vanderbilt cannot prevent a party or witness from discussing the allegations under investigation, Vanderbilt encourages parties to respect the sensitive nature of allegations of sexual misconduct. In addition, the Title IX Regulations and this Protocol prohibit retaliation against any person because they participate or refuse to participate in any part of Vanderbilt's sexual misconduct processes. See [Section V.](#) below.
 - b. To the extent any person receives another person's confidential information (such as medical or psychological treatment records) solely as a result of participation in any investigation or proceeding under this Protocol, such confidential information may not be re-disclosed outside of such forums. This provision does not apply to any information learned outside of an investigation or proceeding under this Protocol or the Policy.
4. Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to bring an adviser of their choice to any related meeting or proceeding. The adviser may be, but is not required to be, an attorney. Vanderbilt will not limit the choice or presence of an adviser for either the Complainant or Respondent in any meeting or grievance proceeding; however, Vanderbilt will restrict the extent to which the adviser may participate in the proceedings, which will apply equally to both parties' advisers. (§ 106.45(b)(5)(iv).)
 - a. Note: Advisers are not permitted to participate directly in any proceeding, with the exception of hearings and certain related meetings, as specified in [Section IV.E.iv.](#) below. Otherwise, advisers may be present solely to advise or support the party and are prohibited from speaking directly to the Investigator, Adjudicator, other parties, or witnesses in such proceedings.
5. Provide written notice to each party of the date, time, location, participants, and purposes of each Formal Grievance Process meeting at which they are invited to participate, with sufficient time for the party to prepare to participate.
 - a. For all hearings, Vanderbilt will provide at least 10 days' notice.²
 - b. For all non-hearing investigative interviews or meetings to which Vanderbilt invites a party, Vanderbilt will provide at least 5 days' notice to that party. (§ 106.45(b)(5)(v).)
6. Provide both parties an equal opportunity to inspect and review any evidence Vanderbilt obtained as part of the investigation, whether obtained from a party or other source, that is directly related to the allegations raised in a Formal Complaint. The provision of such evidence is intended to help each party meaningfully respond to the evidence prior to conclusion of the investigation. (§ 106.45(b)(5)(vi).)
 - a. Parties may elect to submit certain records of medical examinations, treatment, or mental health services. Vanderbilt will not access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to

² For purposes of this Formal Grievance Protocol, "days" means calendar days unless otherwise noted.

the party, *unless* the party voluntarily consents in writing to their use in a Formal Grievance Process. (§ 106.45(b)(5)(i).)

iv. Investigative Report (§ 106.45(b)(5)(vi-vii).)

1. Prior to completion of the investigative report, Vanderbilt will send to each party, and the party's adviser, if any, a preliminary investigative report and the evidence subject to inspection and review.
 - a. Such evidence will be available at any hearing, to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.
 - b. Vanderbilt retains discretion to elect to send such materials in an electronic format or a hard copy. The provision of such evidence may include data security safeguards that prevent it from being downloaded, printed or forwarded.
2. The parties will have 10 days to submit a written response to the preliminary investigative report. Any such comments are limited to no more than 10 double-spaced pages with one-inch margins and 12-point font and must be submitted by hand delivery to the Title IX Office, 110 21st Ave South, Suite 975, or by email attachment to the Investigator by no later than 5 pm on the tenth day following the date the parties receive the evidence. Requests for extensions must be submitted to the Investigator prior to the expiration of the 10-day period. The Investigator will consider any such response prior to completion of the final investigative report.
3. The Investigator will then create a final investigative report that fairly summarizes the relevant evidence. The final investigative report will not make any recommendation as to whether a Protocol violation has occurred or potential sanctions. At least 10 days prior to a hearing, Vanderbilt will send the final investigative report to each party, and the party's adviser if any, for their review and written response.
4. Any such response must be received by the Title IX Coordinator within five days of when the final investigative report was delivered to the party, so that the party's response may be available for consideration by the Adjudicator. If warranted, the Investigator may choose to update the final investigative report to take a party's response into account, in which case the hearing date may be postponed.
5. The University endeavors to conduct and complete the investigative process within 90 business days

physically present in the same location, or any or all parties, witnesses and other participants may appear at the live hearing virtually.

5. Vanderbilt will create a transcript or recording (audio or audiovisual) of any adjudicative hearing. It will be available to the parties for inspection and review pursuant to FERPA.

ii. Pre-hearing

1. The Title IX Coordinator or designee will identify the Adjudicator to the parties five days in advance of the hearing. Either party may challenge a named Adjudicator (Hearing Officer or faculty Hearing Panel member) if the party believes that the Adjudicator has a conflict of interest or bias. Any such challenge must be delivered in writing to the Title IX Coordinator or designee at least two days in advance of the hearing, specifying the reasons for such belief. The Title IX Coordinator or designee has sole discretion to keep or replace the challenged Adjudicator, and if replaced, will postpone the hearing to allow for the appointment of a replacement Adjudicator. (The Title IX Coordinator or designee may consult with the appropriate Dean in cases where a faculty Respondent challenges a faculty Hearing Panel member.)
2. Five days in advance of the hearing, the parties will identify their expected attendees (including any adviser) and their expected witnesses (including themselves), including the witnesses' expected sequence, via writing to the Title IX Coordinator or designee, who will supply the disclosure to the other party and to the Adjudicator. The parties will not be strictly bound to their disclosures, but they should be submitted in good faith.
3. Typically, the parties will be in charge of choosing and supplying their own witnesses at the hearing. When necessary for the pursuit of truth and to gather evidence sufficient to reach a determination, the Hearing Officer (who may consult with the other members of the Hearing Panel, as appropriate) has discretion to ask the Title IX Coordinator or designee to request additional witnesses after receipt of the parties' witness lists; recognizing, however, that Vanderbilt has no ability to compel any witness to attend. Any such requested witness will be disclosed to the parties.
4. Vanderbilt may, within its discretion, require the parties to participate in a pre-hearing conference with their advisers and the Hearing Officer. If the Adjudicator is a Hearing Panel, other members of the Hearing Panel may be present at the pre-hearing conference.

iii. Evidence

1. At the hearing, all relevant evidence will be objectively evaluated. Relevant evidence is any evidence that may tend to make the allegations at issue more or less likely to be true -- *i.e.*, "inculpatory" or corroborating evidence and "exculpatory" or contradicting evidence. Credibility determinations will not be based on a person's status as a Complainant, Respondent, or witness. (§ 106.45(b)(1)(ii).)
2. Consistent with the Title IX Regulations, questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless:
 - a. "offered to prove that someone other than the Respondent committed the conduct alleged" or
 - b. "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."(§ 106.45(b)(6)(i).)
3. While all relevant evidence presented at a hearing by the parties will be considered, the Adjudicator has discretion to grant lesser weight to last-minute information or evidence introduced at the hearing that was not previously presented for investigation by the Investigator. See also [Section IV.D.i.](#), above.

iv. Cross-examination

1. As stated above in [Section IV.D.iii.4.](#), each party may be accompanied to the hearing by the adviser of their choice, who may be, but is not required to be, an attorney. Advisers may be present solely to advise or support the party and are prohibited from speaking directly to the Investigator, Adjudicator, other parties, or witnesses during the hearing, except for conducting cross examination.
2. At the hearing, the Adjudicator will typically ask questions first, before either adviser. Subsequently, each party's adviser is permitted to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Cross examination at the live hearing must be conducted directly, orally, and in real time by th

- ii. Any disciplinary sanction(s) imposed on the Respondent (which in cases involving a faculty Respondent will be determined by the Dean, as described in section vi below; for all other cases, the sanction will be determined by the Hearing Officer); and
 - iii. Whether remedies designed to restore or preserve equal access to Vanderbilt's education program or activity will be provided to the Complainant; and
 - f. Procedures and permissible bases for the parties to appeal the determination. (§ 106.45(b)(7)(ii).)
 - 3. The written determination will be provided to the parties simultaneously.
 - 4. Supportive Measures also may be provided to the Complainant that are designed to restore or preserve equal access to Vanderbilt's education program or activity, even if they are not listed in the written determination. Remedies and Supportive Measures that do not impact the Respondent should not be disclosed in the written determination; rather, the determination should simply indicate that "remedies will be provided to the Complainant." The Title IX Coordinator is responsible for effective implementation of any remedies and Supportive Measures. (§ 106.45(b)(7)(iv).)
- vi. Range of Sanctions and Remedies (§ 106.45(b)(1)(vi)). For student and staff Respondents, the Hearing Officer will, upon a finding of responsibility by a preponderance of the evidence, issue a sanction that is appropriate to the violation. For faculty Respondents, the Respondent's Dean will determine the sanction after consultation with the Hearing Panel, and the sanction will be included in the written determination described in section v.2.e above. Any such sanction for a Respondent will be generally consistent with other disciplinary decisions taken for similarly-situated Respondents.
- 1. For student Respondents, sanctions can include, but are not limited to, the following:
 - a. Expulsion
 - b. Suspension
 - c. Disciplinary Probation
 - d. Deferred Disciplinary Probation
 - e. Educational Conference
 - f. Additional components of sanctions may include, but are not limited to: restrictions, which may include limiting or barring access to certain facilities or activities and removal or reassignment from University housing.
 - 2. For faculty and staff Respondents, sanctions can include, but are not limited to, the following:
 - a. Termination of Employment
 - b. Reduction in salary and/or rank
 - c. Suspension
 - d. Probation
 - e. No Contact Directives
 - f. Campus restrictions
 - g. Revocation of Vanderbilt privileges
 - h. Educational programs
 - i. Removal from (or reassignment to a different role on) a project
 - j. A requirement to correct or retract publications affected by the findings of the investigation
 - k. Written reprimand

For faculty Respondents, the Dean will provide a copy of the written determination to the Provost, or to the Chancellor for VUMC-employed faculty, and the University will report the outcome of the investigation to external agencies, as required.

3. Remedies may also be implemented by the University to restore or preserve equal access to Vanderbilt's education programs or activities. Remedies can include, but are not limited to, the following:
 - a. Access to on-campus counseling services and assistance in setting up an initial appointment with those services;
 - b. No-Contact Directives;
 - c. Rescheduling of academic exams and assignments;
 - d. Providing alternative course or program completion options;
 - e. Changing class schedules, including the ability to transfer course sections or withdraw from a course;
 - f. Changing work schedules, job assignments, job locations, or reporting lines for University employment;
 - g. Changing on campus residence hall or classroom assignments;
 - h. Providing an escort for transit between University classes and activities;
 - i. Providing academic support services, such as tutoring;
 - j. Leaves of absence;
 - k. Referral for consideration of the Complainant's status through the appropriate process (including

1. Issuance and implementation of Remedies and Supportive Measures other than Emergency Removal as described above; and
 2. Informal Resolutions.
- iii. Appeals must be submitted in writing to the Title IX Coordinator or designee within 10 days of the date that the written adjudication determination is provided to the parties. The written appeal must state the ground(s) for the appeal, include the name of the appealing party, and bear evidence that it was submitted by the appealing party. The appeal statement must contain a sufficient description supporting the grounds for appeal. If the grounds for appeal is to consider new evidence that could affect the outcome of the matter that was not reasonably available to the appealing party before or during the time of the hearing or the dismissal, then the written appeal must include such information. The Title IX Coordinator retains discretion to verify and/or waive minor procedural variations in the timing and content of the appeal submission.
- iv. Upon receipt of an appeal, Vanderbilt will
1. Notify the other party in writing when the appeal is filed and implement appeal procedures equally for both parties;
 2. Ensure that the decision-maker (Appeals Panel for faculty Respondents; Appeals Officer for all other Respondents) for the appeal is not the same person or persons as the decision-maker that reached the original determination regarding responsibility or dismissal, the Investigator(s), or the Title IX Coordinator;
 3. Ensure that the decision-maker (Appeals Panel for faculty Respondents; Appeals Officer for all other Respondents) for the appeal does not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent, and that the decision-maker for the appeal has received the appropriate and necessary training;
 4. Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome.
(§ 106.45(b)(8)(iii).)
- v. Vanderbilt will provide a copy of the appeal to the non-appealing party. The non-appealing party may submit a written statement within 10 days that may seek to affirm the initial decision and/or respond to the appeal statement.
- vi. The Title IX Coordinator has discretion to impose or withhold any applicable sanctions or supportive measures prior to the appeal deadline and prior to the resolution of any appeal.
- vii. The appeal will be referred to an Appeals Panel in the case of a faculty Respondent or an Appeals Officer for all other Respondents. For cases where the Respondent is a faculty member, the Appeals Panel will consist of an independent, third-party Appeals Officer and two additional faculty Appeals Panel members, each of whom will have an equal vote. The faculty Appeals Panel members will be selected by the Title IX Coordinator or designee from a standing pool of faculty members nominated by the Deans of the schools. For all other cases, the Appeals Officer will be an independent third-party. The Appeals Panel or Appeals Officer, as appropriate, will issue a written decision describing the result of the appeal and the rationale for the result within a reasonably prompt time frame, typically within 10 days following receipt of all appeals materials. The appeal will determine whether the Hearing Panel or Hearing Officer made an error on the ground(s) alleged in the appeal statement. The appeal is typically determined based on the existing record,

but the appeal decision-maker has discretion to conv

- c. The fact that, at any time prior to agreeing to an informal resolution, any party may withdraw from the informal resolution process and resume the Formal Grievance Process; and
 - d. 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. (§ 106.45)(b)(9)(i-ii).)
- v. If the parties agree to an informal resolution, the Formal Complaint is deemed withdrawn and the Formal Grievance Protocol will be terminated. However, the informal resolution is be considered binding, and its breach gives rise to a new Formal Grievance Protocol, which may restart the Formal Grievance Protocol.

V. Retaliation (§ 106.71.)

- A. 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, its regulation, or this Formal Grievance Protocol, or 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. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or this Protocol, constitutes retaliation.

B. ~~Crimes and offenses involving sexual harassment, sexual assault, or sexual violence, as defined in § 106.70, are not subject to this section.~~

