

Special Procedures Governing Sexual Misconduct Proceedings

STUDENT SPECIAL PROCEDURES GOVERNING PROCEEDINGS INVOLVING ALLEGATIONS OF SEXUAL MISCONDUCT

IMPLEMENTING THE CODE OF STUDENT CONDUCT

At the conclusion of the investigation and all applicable steps described in the University’s Sexual Misconduct Policy, formal complaints against undergraduate or graduate students will be referred to the Dean of Students Office. The procedures set forth below (“Special Procedures”) shall constitute the University’s Title IX and Sexual Misconduct grievance procedures for addressing alleged violations of the Sexual Misconduct Policy. The University’s full Sexual Misconduct Policy, which outlines the University’s reporting, formal complaint and investigative processes, including requests for disability accommodations related to those processes, can be found at: <https://villanova.policytech.com/docview/?docid=199&public=true9>.

1. FORMAL RESOLUTION PROCESS

A. Student procedural rights

- i. Rights of the Respondent
- ii. Rights of the Complainant

B. Acceptance of Responsibility

C. Formal Resolution Hearing

- i. Notice and Participation
- ii. Consolidation Options
- iii. Hearing Decision-Maker
- iv. Hearing Procedures
- v. Advisors
- vi. Presentation of Evidence at the Formal Resolution Hearing
- vii. Closing Statements and Deliberations
- viii. Determination Regarding Responsibility

2. SANCTIONS

3. APPEALS

- A. Grounds for an appeal
- B. Process to appeal

1. FORMAL RESOLUTION PROCESS

As outlined in the full Sexual Misconduct Policy, when a formal complaint is made, a written Notice of Allegations will be sent to the Complainant(s) and Respondent(s). Such notice will occur as soon as practicable after Villanova receives a formal complaint, absent extenuating circumstances. An investigation by a trained investigator will commence as set forth in the Sexual Misconduct Policy and the parties will be provided with options for informal resolution as outlined in the Sexual Misconduct Policy and formal resolution as outlined below.

At the conclusion of the investigation, the investigator will share all evidence submitted during the investigation, the Investigative Report, and any responses with the Dean of Students Office. Upon receipt of the Investigative Report, the Dean of Students will designate a Conduct Review Administrator who will serve as the primary point of contact for Complainants, Respondents, and their advisors during the Formal Resolution process. The Conduct Review Administrator will oversee the implementation of the formal resolution procedures and issue sanctions if the Respondent is found responsible or admits responsibility for violations of policy.

The Complainant and Respondent will meet with the Conduct Review Administrator separately to discuss next steps in the formal resolution process and review the Student Procedural Rights. This meeting will take place promptly after the matter has been referred to the Dean of Students.

If a student fails to respond to notice of a meeting with the Conduct Review Administrator, the resolution process may proceed in their absence.

If a Respondent chooses to withdraw from the University subsequent to the filing of a formal complaint, the University may elect to continue with the grievance procedures in their absence and may take appropriate steps to restrict access to campus and/or University programs or place appropriate holds on student records.

If the Complainant and/or the Respondent intend to have their Advisor (as defined below) accompany them to any meetings with the Dean of Students or the Conduct Review Administrator, they must provide the name and contact information of the Advisor to the Dean of Students or the Conduct Review Administrator at least three (3) business days prior to the initial meeting. If the same Advisor accompanies the party to subsequent meetings, additional notification is not required. Any change in Advisor must be communicated in advance of any scheduled meetings.

The University does not permit unauthorized observers, as determined by the University, to attend or participate in any meetings, hearings or other proceedings as part of the resolution process. Additionally, unauthorized recording of any such meetings and/or proceedings is strictly prohibited.

A. Student Procedural Rights

i. Rights of the Respondent

1. The right to choose whether or not to participate in the grievance procedures, with the understanding that findings may be made and sanctions may be imposed with or without such participation;
2. The right to notice of the allegations;
3. The right to notification of the grievance procedures;
4. The right to review all directly related evidence and the investigative report;
5. The right to a prompt and impartial response and resolution of complaints;
6. The right to be presumed not responsible until found otherwise;
7. The right to have the University bear the burden of proof by a preponderance of the evidence;

8. The right to present relevant statements, materials and witnesses during grievance procedures;
9. The right to have an Advisor of choice throughout the process or appointed by the University, free of charge, for the purposes of conducting cross-examination of the other party and witnesses during a conduct hearing;
10. The right to have available at the hearing all relevant evidence and the investigative report;
11. The right to have an Advisor conduct live cross-examination of any witnesses and/or the Complainant;
12. The right to written notification of:
 - a. any finding of responsibility
 - b. findings of fact supporting the determination
 - c. statement of and rationale for the result as to each allegation
 - d. any disciplinary sanctions imposed
 - e. any remedies provided to the Complainant
13. The right to be free from retaliation regardless of participation in the University's grievance process; and
14. The right of appeal consistent with these Special Procedures.

ii. Rights of the Complainant

1. The right to choose whether or not to participate in grievance procedures, with the understanding that findings may be made with or without such participation
2. The right to notice of the allegations;
3. The right to notification of the grievance procedures;
4. The right to review all directly related evidence and the investigative report;
5. The right to a prompt and impartial response and resolution of the complaint;
6. The right to have the University bear the burden of proof by a preponderance of the evidence
7. The right to present relevant statements, materials and witnesses during the grievance procedures;
8. The right to have an Advisor of choice throughout the process or appointed by the University, free of charge, for the purposes of conducting cross-examination of the other party and witnesses during a conduct hearing
9. The right to have available at the hearing all relevant evidence and the investigative report;
10. The right to have an Advisor conduct live cross-examination on any witnesses and/or the Respondent

11. The right to written notification of:
 - a. any finding of responsibility
 - b. findings of fact supporting the determination
 - c. statement of and rationale for the result as to each allegation
 - d. any disciplinary sanctions imposed
 - e. any remedies provided
12. The right to be free from retaliation for filing a complaint or participating in the University's grievance process; and
13. The right of appeal consistent with the provisions of these Special Procedures.

B. Acceptance of Responsibility

At any point following a formal complaint, a Respondent has the option to accept responsibility.

Following the acceptance of responsibility, the Respondent will be sanctioned accordingly by the Conduct Review Administrator utilizing the sanctioning considerations outlined below. Acceptance of responsibility may be rejected by the Conduct Review Administrator. The Conduct Review Administrator will provide all parties written notice of the sanction(s) imposed. Acceptance of responsibility does not waive the right to appeal as outlined below.

C. Formal Resolution Hearing

Formal Resolution hearings are designed to determine responsibility for alleged violations. As such, the procedures are governed by University policies consistent with federal and state law.

The Conduct Review Administrator, as assigned by the Dean of Students, will facilitate the administrative needs of the hearing and will be present during the hearing to provide assistance.

i. Notice and Participation

The Conduct Review Administrator will provide the Complainant and Respondent with a written notice of the hearing. The notice will include: the specific policy violations that will be the subject of the hearing; the date, time, and location of the hearing; the name of the Hearing Decision-Maker; how to challenge participation by the Hearing Decision-Maker on the basis of conflict of interest or bias; and information regarding procedural steps consistent with these Special Procedures and the Sexual Misconduct Policy.

The Complainant and Respondent are expected to cooperate fully during the hearing. If either party fails to appear at a scheduled hearing, the hearing may proceed without them.

ii. Consolidation Options

In situations involving a formal complaint against multiple Respondents, where the allegations against each Respondent arise from the same set of facts or circumstances, the Conduct Review Administrator, in consultation with appropriate University officials, will determine whether the hearing concerning each Respondent will be conducted either separately or jointly.

In situations involving multiple formal complaints pending against the same Respondent, the University has discretion to consolidate the hearings where the incidents arise out of the same facts or circumstances. The University also has discretion, but not the obligation, to solicit and consider the input of the parties regarding the consolidation of hearings. If, during the course of the hearing, further violations of the Code of Student Conduct become apparent, the decision-maker may recommend that such alleged violations be investigated and resolved as a separate case.

iii. Hearing Decision-Maker

The hearing will be conducted by a fair and impartial Hearing Decision-Maker, who will conduct an objective evaluation of all relevant evidence, including both inculpatory and exculpatory evidence. The Hearing Decision-Maker may be a Villanova University faculty or staff member, or an external professional, as determined by the Conduct Review Administrator.

Any individual serving as a Hearing Decision-Maker will be free from conflicts of interest and bias for or against either party, and trained on the definitions of sexual misconduct, including sexual harassment, the scope of the University's education program or activity, how to conduct a hearing, how to serve impartially, by avoiding prejudgment of the facts at issue, conflicts of interest, and bias; and how to serve as an informed and impartial decision-maker. Training for Hearing Decision-Makers will include training content provided to investigators, as well training on any technology to be used at a live hearing and on issues of relevance of questions and evidence.

The Complainant and/or the Respondent may challenge the Hearing Decision-Maker if they believe that an actual conflict of interest or bias exists. The party making this challenge must submit a written request to the Title IX Coordinator with specific and verifiable information or documentation. All objections must be raised within five (5) business days of receiving notification of the appointed Hearing Decision-Maker. The Title IX Coordinator will make the determination whether to replace the Hearing Decision-Maker. The Complainant and Respondent may not contact the Hearing Decision-Maker or have third parties contact the Hearing Decision-Maker, prior to the hearing.

iv. Hearing Procedures

Hearing Decision-Maker shall ask questions, run the hearing, make determinations on procedural issues, make findings of responsibility, make findings of fact supporting any determination of responsibility, and compile a written Determination Regarding Responsibility including a statement of and rationale for the result as to each allegation.

All hearings shall be held in an appropriate venue as determined by the Conduct Review Administrator and shall be private. The Conduct Review Administrator can provide for the hearing to occur virtually with technology that enables the parties to appear remotely from separate locations. The University

does not permit unauthorized observers, as determined by the University, to attend or participate in any meetings, hearings, or other proceedings as part of the resolution process. Additionally, unauthorized recording of any such proceedings is strictly prohibited.

The University will create and maintain a transcript of the hearing which, when complete, will be made available to the parties and their advisors.

Disruptive, threatening, intimidating, or uncivil behavior by the parties or their advisors will not be tolerated. Violations will normally result in a warning being issued by the Hearing Decision-Maker, or the Conduct Review Administrator. Repeated violations may result in offending party being asked to leave the hearing and the hearing may continue in their absence.

v. Advisors

A Complainant, and/or a Respondent participating in a Formal Resolution Hearing must be accompanied by an Advisor. This can be an Advisor of their choosing or, if the party does not have an Advisor or their Advisor is unavailable, a University-appointed Advisor provided free of charge for the sole purpose of facilitating cross-examination of the other party and witnesses. The Advisor may, but need not be, an attorney. If the party's Advisor of choice for the hearing is different from the Advisor attending previous meetings with the Conduct Review Administrator, the party must inform the Conduct Review Administrator of the change. This notification must be in writing, a minimum of five (5) business days in advance of the hearing and include the name and contact information for the Advisor.

A party's Advisor of choice may provide support and advice to their advisee at any meeting and/or hearing. With the exception of the advisor's cross-examination during a hearing, they may not speak on behalf of their advisee or otherwise participate in, or in any manner delay, disrupt, or interfere with meetings and/or hearings. The Advisor will offer no testimonial evidence or answer questions on behalf of their advisee; the Advisor may not conduct direct examination of their advisee; and the advisor may not present opening or closing remarks. The Advisor, and not the Complainant or Respondent, will conduct cross-examination of any witness in compliance with the hearing's procedures and the University's policies and procedures.

Advisors may ask to suspend any meetings, interviews, or hearings briefly to provide consultation; the University retains the discretion to deny such requests if they are excessive, burdensome, or otherwise unreasonable. The University may remove or dismiss advisors who do not abide by the restrictions on their participation or who are otherwise disruptive. An advisor may be asked to meet with the Title IX Coordinator in advance of any meetings or hearings to receive and acknowledge the University's overview of the policy, expectations of the role, privacy considerations, and appropriate decorum.

An advisor should plan to make themselves reasonably available for all meetings and hearings. Villanova will not intentionally schedule meetings or hearings on dates where the advisors for all parties are not available, provided that the advisors act reasonably in providing available dates and work collegially to find dates and times that meet all schedules. Villanova's obligations to investigate and adjudicate in a prompt timeframe applies to matters governed under the University's Sexual Misconduct Policy and the University cannot agree to extensive delays solely to accommodate the schedule of an Advisor. Villanova will not delay a meeting or hearing under the Sexual Misconduct Policy for more

than five (5) business days due to the unavailability of an advisor and may offer the opportunity to obtain a different advisor or utilize one provided by Villanova. An advisor is entitled to review all information gathered in the investigation that is directly related to the allegations (as part of evidence review), to access to the investigation report, and to cross-examine the other party and all witnesses during the hearing.

vi. Presentation of Evidence at the Formal Resolution Hearing

The Complainant and the Respondent, may present:

- opening and closing statements concerning the alleged violation(s);
- relevant documentation and other evidence gathered during the investigatory process;
- relevant witnesses identified during the investigatory process.

The Respondent and the Complainant and their advisors may review all evidence and the investigative report provided to the Hearing Decision-Maker prior to the commencement of the hearing and have all evidence and the investigative report available to them during the hearing.

Formal rules of evidence shall not apply. In the Hearing Decision-Maker's discretion, evidence, shall be permitted if it is relevant, reliable, not unduly repetitious, and it is the sort of information on which responsible persons are accustomed to rely in the conduct of serious affairs.

During the hearing, the parties and witnesses will provide information to and answer questions from the Hearing Decision-Maker. Except for cross-examination by the Advisor, the Respondent, the Complainant, the Advisors and the witnesses will direct their comments and/or questions only to the Hearing Decision-Maker. The Hearing Decision-Maker may consider statements of all parties and witnesses, regardless of their participation in the hearing. Before any questions are answered, the Hearing Decision-Maker will determine if the question is relevant. Questions that are determined to be irrelevant, duplicative of those already asked or harassing in nature and tone may be disallowed.

In general, the following types of evidence and questions are not relevant:

- Evidence and questions about the Complainant's sexual predisposition or prior sexual history unless:
 - Such questions and evidence are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or
 - The questions and evidence concern specific incidents of the Complainant's prior sexual history with respect to the Respondent and are offered to prove consent.
- Evidence and questions that constitute, or seek disclosure of, information protected under a legally-recognized privilege.
- Any party's medical, psychological, and similar mental health records unless the party has given voluntary, written consent.

In addition, credible evidence regarding other reports of, or findings of responsibility for, similar conduct by the Respondent may also be deemed relevant to prove motive, intent, absence of mistake, pattern or another material fact. Similarly, prior or subsequent conduct of a Complainant, even when it involves conduct that may violate University policy, may be considered when relevant.

Any party seeking admission of prior sexual history and/or evidence of other misconduct, or seeking to challenge such evidence, must do so in writing: by advising the investigator during the investigatory process; and/or by advising the Conduct Review Administrator at least 3 business days in advance of the hearing. The written notice shall set forth the evidence the party is seeking to introduce and the relevancy of such information.

The Hearing Decision-Maker will make the determination as to the admissibility of this information or questions and will instruct all parties accordingly regarding any limit in scope or admissibility.

vii. Closing Statements and Deliberations

After all statements and materials have been presented, the Complainant and the Respondent may present final comments to the Hearing Decision-Maker. Subsequently and in private, the Hearing Decision-Maker will deliberate to determine by a preponderance of the evidence whether the Respondent has violated University policy.

After the Hearing Decision-Maker has reached a determination as to responsibility, the Conduct Review Administrator will determine the appropriate sanction, as outlined below.

viii. Determination Regarding Responsibility

The Conduct Review Administrator will simultaneously provide the written Determination Regarding Responsibility to all parties. The Determination will include:

1. Alleged violations of the Code of Student Conduct;
2. A description of the procedural steps taken from the filing of the formal complaint;
3. Findings of fact supporting the determination;
4. Conclusions regarding which section(s) of the Code of Student Conduct, if any, the Respondent has or has not violated.
5. For each alleged violation:
 - a. A statement of, and rationale for, a determination regarding responsibility;
 - b. A statement of, and rationale for, any disciplinary sanctions determined by the Conduct Review Administrator (as outlined below) imposed on the Respondent; and
 - c. A statement of, and rationale for, whether remedies designed to restore or preserve equal access to Villanova's education program or activity will be provided by the University to the Complainant; and
6. Procedures and the permitted reasons for the parties to appeal as outlined below, including the name of the Appeal-Decision Maker

Appropriate documentation will be maintained as required to allow the University to comply with applicable law.

2. SANCTIONS

After the finding or admission of responsibility, the Conduct Review Administrator will impose sanctions after considering the following:

1. The nature of the violation and the circumstances surrounding it;

2. Impact on the individuals involved and/or the community as a whole;
3. Statements made or evidence presented in the investigative report and/or hearing;
4. Prior disciplinary record of the student;

The Conduct Review Administrator may consult with other University officials as they deem appropriate.

Sanctions serve to reinforce that students are held responsible and accountable for their behavior. This is accomplished by measures to educate, to deter future misconduct and to provide consequences for one's actions.

Villanova University reserves the right to notify parent(s)/legal guardian(s) about the disciplinary status of their student, to the extent consistent with the provisions of the Family Educational Rights and Privacy Act.

Disciplinary sanctions comprise the range of official actions which may be imposed for violations of the Code of Student Conduct. Any violation of the Code of Student Conduct may result in the full range of sanctions outlined in the [Sanctioning](#) section of the Student Handbook, and one or more may be imposed in response to a given situation.

3. APPEALS

Both parties have the right to appeal the final determination of responsibility and/or the resulting sanction. The trained Appeal Decision-Maker, who may be a Villanova faculty or staff member or external professional, as determined by the Dean of Students, will review appeals. The Appeal Decision-Maker's responsibility will be strictly limited to determining the issues on appeal. The Appeal Decision-Maker may consult with other University officials as they deem appropriate and all decisions made by the Appeal Decision-Maker are final, including whether or not an appeal is procedurally permitted.

During the appeal process students who have received a disciplinary sanction may be subject to certain restrictions, impacting such things as: class attendance; on-campus housing; participation and/or membership in organizations, athletic events/teams/clubs, and/or extracurricular activities; attendance at University events/functions; and access to University buildings.

A. Grounds for Appeal

The Respondent and the Complainant may request an appeal based only on one or more of the following grounds:

Appeal of the Determination as to Responsibility:

1. Material Procedural Irregularity that affected the outcome of the matter;
2. New Relevant Evidence that was not reasonably available at the time of determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; or

3. The Title IX Coordinator, investigator(s), or decision-maker(s) had a Conflict of Interest or Bias for or against an individual Complainant or Respondent, or for or against Complainants or Respondents in general, that affected the outcome of the matter. The appeal must specify the basis on which the party believes there is an actual conflict of interest or bias that affected the matter.

Appeal for Review of Sanction:

4. The sanction(s) imposed were disproportionate to the violation(s).

B. Process to Appeal

As part of the written Determination of Responsibility, the Conduct Review Administrator will provide the parties with the name of the Appeal Decision Maker to whom appeals are submitted. The Respondent and the Complainant may request an appeal within seven (7) business days from the time of notification of determination and access to the hearing transcript. Appeals must be submitted to the Appeal Decision-Maker in writing and:

- Be from and signed (physical or electronic) by the Complainant or Respondent;
- Consist of a concise and complete statement no more than eight (8) single spaced pages (including attachments) utilizing 12-point font;
- Set forth one or more appropriate grounds for appeal as listed above.

If the appeal does not articulate appropriate grounds for appeal, it will be denied and both parties notified. If the appeal does articulate appropriate grounds for appeal, the Appeal Decision-Maker will notify both parties of the filing of the appeal. Each party will be given the opportunity to review and respond, in writing, to the other party's appeal. This response must be submitted within five (5) business days of the notice of the filing of an appeal. Any written response to an appeal will also be shared with the other party. No further written submissions will be permitted.

The Appeal Decision-Maker will promptly review the written appeal submissions and responses (if any) and any other materials relevant to the appeal, which may include: the investigative report, hearing transcript, and the Determination of Responsibility, and notify the parties of the outcome.

1. Appeals based on appropriate grounds of a Material Procedural Irregularity, New Relevant Evidence, or Conflict of Interest or Bias, will be resolved, as outlined below, prior to addressing any Appeals for Review of Sanction.
 - a. **Material Procedural Irregularity** – if found, and depending on the nature of the procedural error, the matter may be heard by a new Hearing Decision-Maker or the Appeal Decision-Maker may remand the matter to the original Hearing Decision-Maker for further deliberation to remedy the error ;
 - a. **New Relevant Evidence** – if found, the matter will be remanded to the original Hearing Decision-Maker for reconsideration in light of the new evidence;
 - b. **Conflict of Interest or Bias** – if found, the matter will be remanded for further deliberation consistent with the appellate finding.

Remedies for appeals based on the grounds listed above do not include automatic dismissal of the case or a unilateral determination of responsibility by the Appeal Decision-Maker.

2. Appeals for Review of Sanction will be heard subsequent to the resolution of any Appeals for Material Procedural Irregularity, New Relevant Evidence, or Conflict of Interest or Bias (if submitted). If the appeal is determined to be based on appropriate grounds for Review of Sanction, the Appeal Decision-Maker will accept as final and binding the previous decision that the Respondent has violated the Code of Student Conduct. Each party will be given the opportunity to separately meet and discuss their appeal for review of sanction and/or their response to the other party's appeal with the Appeal Decision-Maker. Each party may be accompanied by their advisor who may not participate in the discussion. Parents and guardians are permitted to participate in this discussion. The voluntary meeting will normally be scheduled within ten (10) business days of the original appeal being filed.

Within approximately ten (10) business days, the Appeal Decision-Maker will issue a written decision notifying the parties of the result of the appeal and rationale for the result.

SEXUAL MISCONDUCT COMPLAINT PROCEDURES FOR COMPLAINTS AGAINST FACULTY OR STAFF

Complaints of sexual misconduct against faculty or staff governed by special procedures outlined in the University's [Sexual Misconduct Policy](#).