

# Procedures for the Resolution of Complaints of Prohibited Conduct ("Complaint Resolution Procedures")

## **I. SCOPE OF THESE PROCEDURES**

The procedures set forth below will guide the Formal Resolution process, which includes the investigation and adjudication of Complaints of Prohibited Conduct, as defined in Section VIII of the Policy.

## **II. INITIATION OF THE INVESTIGATION**

An investigation under these procedures will be initiated at the Title IX Coordinator's direction after receipt of a Complaint and the issuance of a Notice of Allegations to the Parties.

## **III. THE INVESTIGATION**

### **1. Overview of the Investigation**

The investigation is a neutral evidence-gathering process. During the investigation, the Parties will have an equal opportunity to be heard, to submit relevant evidence, to identify witnesses who have relevant information, including fact and expert witnesses, and to submit questions that they believe should be directed by the Investigator to each other or to any witness. The Investigator will also seek to obtain relevant evidence identified during the investigation, including relevant evidence that has not been offered by either Party. Olivet may continue an investigation without the participation of any Party.

### **2. The Investigator**

Investigations will be conducted by one or more appropriately trained individuals appointed by the Title IX Coordinator. The Investigator will be impartial and will conduct a prompt, thorough, and fair investigation. The Investigator may be an Olivet employee or an external party.

### **3. Evidence Collection**

#### **a. Testimonial Evidence Collection: Investigative Interviews**

Testimony is evidence. Thus, throughout the investigation, the Investigator will endeavor to interview the Parties and other individuals (witnesses) who have information that is relevant or related to the allegations of the Complaint, including fact and expert witnesses identified by the Parties. The Investigator will provide written notice of the date, time, and location of the interview, with sufficient time for the participants to prepare. Investigative interviews may be

conducted in person, or via telephone or video conference. Following the investigative interview, the Investigator will prepare a full written summary of the interview (“Interview Summary”).

b. Non-Testimonial Evidence Collection

During the investigation, the Investigator will gather other available evidence and information that is related to the allegations of the Complaint, including, without limitation, electronic and other records of communications between the Parties or witnesses (via voicemail, text message, audio messages, email, or social media sites), photographs and videos, medical records (subject to required consent), and records generated by public safety or law enforcement.

c. Evidence Collection Records

The Investigator will maintain records of all testimonial and non-testimonial evidence obtained and the source of such evidence. The Investigator will also maintain a record of all testimonial and non-testimonial evidence offered or sought, but not obtained, and the reason such evidence was not obtained. These records will be made a part of the evidence file.

#### **4. Evidence File and Investigation Reports**

At the conclusion of the fact gathering process, the Investigator will prepare an Evidence File and Investigation Report.

a. The Evidence File

The Evidence File will include all permissible evidence that is relevant to the allegations in the Complaint, including the interview summaries, evidence provided by the parties, and evidence gathered by the investigator, including both inculpatory and exculpatory evidence.

b. Investigation Report

Upon conclusion of the evidence gathering phase of the investigation, the Investigator will produce an Investigation Report that summarizes the allegations, the relevant facts, and all relevant information gathered during the investigation (which may include statements by the parties, third-party witnesses, or others with information and any physical, written, or electronic or other evidence). The Investigation Report will be provided to the Title IX Coordinator and shared with the Parties (to the extent permitted by FERPA or other applicable law), along with the Evidence File. Each party will have the opportunity to provide in writing to the Investigator or Title IX Coordinator their comments on the Preliminary Investigation Report identifying any factual inaccuracies or misunderstandings and any additional questions to suggest that the Investigator ask of the other party or other witnesses (along with an explanation of why the party believes the question(s) would elicit relevant information that has not already been sought or obtained by the Investigator) within 5 calendar days of receipt of the Preliminary Investigation Report. The Investigator will address any identified factual inaccuracies or misunderstandings

reported by either party as appropriate and determine whether to ask any additional questions of either party or any witness.

c. Appointment of Adjudicator and Notification to the Parties

The Title IX Coordinator will then appoint an adjudicator whose responsibility it will be to adjudicate the Complaint. The adjudicator may be the investigator or the Title IX Coordinator themselves, or other designee selected by the Title IX Coordinator. Within three (3) business days of being notified about the adjudicator's identity, either Party may raise concerns, if any, about bias or conflict of interest to the Title IX Coordinator or, if the concerns relate to the Title IX Coordinator as adjudicator, to the Vice President for Finance.

The Investigation Report and the Evidence File will be transmitted to the adjudicator. The adjudicator will promptly send written notice to the Parties notifying the Parties of the adjudicator's appointment; setting a deadline for the Parties to submit a written response to the Investigation Report and Evidence File, which shall not be sooner than seven (7) business days from the date the investigator transmitted the Investigation Report.

d. Response to the Investigation Report

Each party will have the opportunity to provide a written response to the Investigation Report, which must include:

- To the extent the Party wishes to respond to any aspect of the Investigation Report or Evidence File, any such response.
- A statement as to whether the Party contends the credibility of the other Party or any witness is in dispute; if so, how such credibility dispute is relevant in evaluating any of the allegations in the Complaint.
- A list of questions the Party contends should be posed to the other Party and any witnesses.
- Any argument that a particular piece or class of evidence should be categorically excluded from consideration.
- Argument regarding whether any of the allegations in the Complaint are supported by a preponderance of the evidence.
- Argument regarding whether any of the allegations in the Complaint constitute Prohibited Conduct.

While the Party may receive assistance in preparing the written response, the written response must be submitted and signed by the Party themselves or someone with legal authority to act on their behalf.

#### e. Meetings with Parties and Witnesses

After reviewing the Parties' written responses to Investigation Report, the adjudicator will meet separately with each Party to ask questions, including questions posed by the other Party, concerning the Party's written response, the Investigation Report, and/or the evidence collected during the investigation, including questions that may bear on credibility. The adjudicator may also meet with specific witnesses whose credibility is in dispute, and whose testimony is potentially relevant in evaluating any allegations in the Complaint, to pose questions that may bear on credibility.

When a Complaint includes Sex-Based Harassment allegations involving a student Complainant or student Respondent, the individual meetings will be video and/or audio recorded. The adjudicator will provide copies of the recordings, or transcripts of the recordings, to the Parties. Each Party will have **seven** (7) days to review the recordings or transcripts and propose follow-up questions to be posed to the other Party and/or witnesses. The adjudicator will then meet promptly with parties and/or witnesses to pose follow-up questions, as deemed appropriate by the adjudicator.

The adjudicator will screen questions submitted by the Parties to ensure they are clear, relevant, and not harassing, and will exclude questions and evidence that are inadmissible. The adjudicator will give a Party an opportunity to clarify or revise a question that the adjudicator has determined is unclear or harassing and, if the advisor sufficiently clarifies or revises the question, the question will be posed.

#### f. Subjection to Questioning

In the event a Party or witness who was interviewed during the investigation declines to meet with the adjudicator or respond to questions that have been deemed relevant and not impermissible, the adjudicator may consider the individual's statements, although the adjudicator must consider whether the individual's failure to meet and/or respond to questions about their credibility should affect the weight to be given to such statement. The adjudicator may choose to place less or no weight upon the individual's prior statements, provided that the adjudicator may not draw an inference about whether Sex Discrimination or other Prohibited Conduct occurred based solely on a Party's or witness' refusal to respond to questions.

#### g. Deliberation and Determination

After meeting with each Party and any witnesses whose credibility is in dispute, the adjudicator will objectively evaluate all relevant evidence, including both inculpatory and exculpatory evidence, and ensure that any credibility determinations made are not based on a person's status as a Complainant, Respondent, or witness. The adjudicator will take care to exclude from consideration any evidence that the adjudicator determines is inadmissible. The adjudicator will resolve disputed facts using a preponderance of the evidence standard and reach a

determination regarding whether the facts that are supported by a preponderance of the evidence constitute one or more violations of the Policy as alleged in the Complaint.

In the event the adjudicator determines that the Respondent is responsible for violating this Policy, the adjudicator will, prior to issuing the Written Determination, consult with an appropriate University official with disciplinary authority over the Respondent and such official will determine any discipline to be imposed. The adjudicator will also, prior to issuing the Written Determination, consult with the Title IX Coordinator who will determine whether and to what extent ongoing Support Measures or other remedies will be provided to the Complainant and other persons, as appropriate.

#### h. Written Determination

Based on the information gathered during the investigation, including any facts, documents, statements, or other comments obtained during the review period of the Investigation Report and adjudication, the adjudicator will prepare a Written Determination that includes the adjudicator's credibility determinations, a finding as to whether the University's Policy has been violated in the matter by the Respondent, and the rationale for these determinations. If the Complaint presents more than a single allegation of misconduct, a finding will be made separately as to each allegation. The Written Determination will also include the discipline determined by the appropriate University official. The Written Determination will include a description of the University's process and grounds for appeal and whether the Parties or other persons will receive any ongoing Supportive Measures or other remedies as determined by the Title IX Coordinator.

The Written Determination will be simultaneously provided to the Parties and their Advisors in electronic format.

## **IV. EVIDENTIARY CONSIDERATIONS**

### **1. Relevance**

Evidence is relevant when it is related to the allegations of Sex Discrimination or other Prohibited Conduct under investigation and may aid an Investigator in determining whether the alleged conduct occurred. Determinations regarding relevance of any proffered evidence will be subject to the following requirements:

#### a. Prior Sexual History of Complainant

Evidence and questions about the Complainant's sexual interests or prior sexual conduct are impermissible unless such questions and evidence are offered to prove that someone other than the Respondent committed the alleged conduct, or if the questions and evidence concern specific

incidents of the Complainant's prior sexual conduct with the Respondent and are offered to prove consent.

The fact of prior consensual sexual conduct between the Complainant and Respondent does not by itself demonstrate or imply the Complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

**b. Prior or Subsequent Conduct**

Prior or subsequent conduct of a Respondent may be considered in determining pattern, knowledge, intent, motive, or absence of mistake. For example, evidence of a pattern of conduct prohibited by this Policy by a Respondent, either before or after the incident in question, regardless of whether there has been a finding of a Policy violation, may be deemed relevant to a determination of responsibility.

**c. Medical and Mental Health Condition, Treatment, or Diagnosis**

A party's or witness's medical or mental health diagnosis or treatment records maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the individual are not permissible unless the party or witness provides voluntary, written consent for the use of such evidence in Olivet's Complaint Resolution Procedures.

**d. Privilege and Confidentiality**

The Investigator will not allow, rely upon, or otherwise permit questions or evidence that is protected by a legally recognized privilege or confidentiality, unless the person holding such privilege or right to confidentiality has waived the privilege or confidentiality.

## **V. Appeals**

Both Parties may appeal the written decision of an adjudication, or a Title IX Coordinator's dismissal of a Complaint or any allegations therein or the determination of responsibility following an investigation on the following grounds:

- Procedural irregularity that would change the outcome;
- New evidence that would change the outcome and that was not reasonably available when the determination whether sex-based harassment occurred or dismissal was made;
- The Title IX Coordinator or Investigator had a conflict of interest or bias for or against complainants or respondents generally or the individual Complainant or Respondent that would change the outcome; or
- The Sanctions or Remedies imposed are disproportionate with the violation(s).

No other grounds for appeal are permitted.

A Party may commence an appeal by notifying the Title IX Coordinator of their desire to appeal and by submitting a written statement to the Title IX Coordinator within five (5) business days of the issuance of the final determination of responsibility or the dismissal of the Complaint. The appeal statement must set forth:

- the determination(s) being appealed,
- the specific ground(s) for the appeal, and
- the facts supporting the grounds.

The appeal statement is limited to 2,500 words. Failure to submit an appeal and statement within the five (5) business days or any approved extension constitutes waiver of the right to appeal.

A copy of the appeal statement will be provided to the other Party, who, within five (5) business days may submit a written response to the Title IX Coordinator. The response should address both the specific ground(s) for appeal set forth in the appealing Party's statement and the specific facts asserted by the appealing Party. The response is limited to 2,500 words.

The Title IX Coordinator will submit the appeal and response, if any, to the appellate panel, ("Appeal Panel") which will be comprised of individuals appointed by the Title IX Coordinator. The panel members will not be the Title IX Coordinator, Investigator, or any Title IX team members assigned to the case that is being appealed. The Appeal Panel will establish a reasonable schedule for issuing a written decision, typically no later than ten (10) business days after receipt of the non-appealing Party's submission or the time for submission has expired.

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

- reverse a decision or finding;
- change a sanction or remedy;
- remand a decision of dismissal to the Title IX Coordinator;
- remand a case to the original Investigator for clarification or reconsideration consistent with the Appeal Panel's decision, if doing so would assist with a timely, practicable, and efficient resolution of the case; or
- remand a case for a new or additional investigation, followed by an adjudication consistent with these procedures, to either the original Investigator or to a new Investigator.

If the Appeal Panel reverses a finding of not responsible and finds the Respondent responsible for Prohibited Conduct, the Appeal Panel must also determine appropriate sanctions and remedies in their written decision. If the Appeal Panel calls for the admission of new evidence, if possible, it will remand the case to the Investigator from which it originated for review.

The decision of the Appeal Panel will be final and binding on all Parties.