

Title IX User Guide for Parties, Advisors and Others

A. GUIDE FOR ADVISORS

The College appreciates your willingness to serve as an **Advisor**. This section of the Guide provides important information to individuals who agree to serve as **Advisors** to **Parties** in the **Title IX Grievance Procedure**. All **Advisors** must read this Guide and the Title IX Policy so that they have a thorough understanding of the process and their role. If you have any additional questions, please direct them to the **Title IX Coordinator**.

Note that terms that appear in bold have a specific meaning, which can be found in Section I of the Title IX Policy.

1. What is an “Advisor” in the Title IX Grievance Procedure?

Once a **Formal Complaint of Sexual Harassment** has been filed, all **Parties**, whether **Complainants** or **Respondents**, have the right to an **Advisor** of their choice to assist them during the course of the **Grievance Procedure**. Because the **Parties** are engaged in a **Grievance Procedure**, **Parties** are encouraged to obtain an **Advisor** as early as possible in the process. An **Advisor** may be a member of the Colby community, a family member or friend, another support person, or an attorney. A **Party** may engage an **Advisor** at any point in the **Grievance Procedure**, and is *required* to have an **Advisor** for the purpose of conducting cross-examination at the live hearing.

A **Party** may also have more than one **Advisor**, and may wish to engage a person to assist the **Party** with emotional support and information (a support **Advisor**) through the **Grievance Procedure**, as well as an **Advisor** to conduct cross-examination and other testimony during the hearing (a hearing **Advisor**). Because the roles of a hearing **Advisor** and a support **Advisor** can overlap, this Guide generally discusses the roles and duties of **Advisors** without specifically distinguishing between them except where noted. **Advisors** can also be **Witnesses**, but this is not recommended because it can cause confusion about roles and responsibilities.

2. What are the qualifications to be an Advisor?

The Title IX regulations do not define any specific requirements for individuals who serve in the role of **Advisor**. Moreover, if a **Party** has engaged a hearing **Advisor** and a support **Advisor**, their roles may overlap. However, as a general matter, to effectively serve in the role of an **Advisor**, an individual should:

- Have the time to support the **Party** and to attend scheduled meetings during the **Grievance Procedure**;
- Be prepared to assist the **Party** in reviewing evidence, responding to the investigation report and preparing a written response to the report if the **Party** wishes to;
- Be prepared to assist in an informal resolution process if the **Parties** undertake this step;
- Be prepared to assist the **Party** in preparing for the live hearing;
- Be prepared to question and cross-examine **Parties** and **Witnesses** (this is the role of the **Advisor**, not the **Party**);
- Be prepared to assist the **Party** with opening and closing statements, as well as presentation of evidence related to sanctions;
- Be willing to comply with the College's rules of decorum for live hearings and limits on active participation in other meetings.

3. Will I be paid for my services as an Advisor?

Generally, the role of **Advisor** is not compensated. However, if a **Party** chooses an **Advisor**, such as an attorney or other non-College individual who requires compensation, this is at the **Party's** cost. The only exceptions are the following:

- The College provides up to \$500 for student **Parties** to consult with an attorney at any point in the **Grievance Procedure**;
- If a **Party** does not have an **Advisor** for the live hearing, or an **Advisor** fails to appear for the live hearing, the College will appoint an **Advisor** at no cost to the **Party**, as required by the Title IX regulations.

4. Is there someone I can talk to about the Advisor role before I accept this responsibility?

Individuals who have questions about the **Advisor** role may direct any questions to the **Title IX Coordinator**, Meg Hatch, 207-859-4266, titleix@colby.edu. Additionally, individuals who wish to serve as support **Advisors** may direct questions to the Confidential Title IX Advocate, Emily Schusterbauer, 207-859-4093, emily.schusterbauer@colby.edu.

5. What kind of communications should I expect from the College during the Grievance Procedure?

The **Title IX Coordinator** is the College's point of contact for **Parties** during the **Grievance Procedure**. Generally speaking, the **Title IX Coordinator** communicates directly with the **Parties**, and it is the **Parties'** responsibility to share pertinent information about upcoming meetings and any materials with their **Advisor**. The only exceptions are as follows:

- The **Investigator** provides to both the **Party** and their **Advisor**, evidence gathered by the **Investigator** for inspection and review.
- The **Title IX Coordinator** provides to both the **Party** and their **Advisor**, the **Investigator's** report, unless the **Party** states otherwise. The **Parties** and **Advisors** must acknowledge that they will not further disseminate the investigation report to any person, but may use it to prepare for the hearing.

6. What should I do if a meeting or the hearing is scheduled on a date or time when I have a conflict?

The College is under an obligation to move through the **Grievance Procedure** in a reasonable timeframe, and **Advisors** should do their best to be available to serve in this role when meetings or the hearing is scheduled. The **Parties** may make requests for short extensions of deadlines, meetings or the hearing for good cause (illness, unavoidable absence of their **Advisor**, etc.). Any such request must be made to the **Title IX Coordinator** by the **Party** in writing and must explain the reason an extension is requested. The **Title IX Coordinator** shall notify **Parties** of any extensions that are granted or denied.

If a **Party** does not have a hearing **Advisor**, the **Party** must notify the **Title IX Coordinator** as soon as possible after receiving notice of the hearing. The College will then appoint a hearing **Advisor** at no cost to the **Party**. The College will endeavor, if possible, to appoint that **Advisor** within a reasonable number of **days** before the hearing to provide time for the **Advisor** to prepare with the **Party** for the hearing, including preparation of questions for cross-examination. If an **Advisor** does not appear for the hearing, the College is obligated to appoint another **Advisor** for the **Party** to assist them at the hearing. Likewise, if neither the **Party** nor the **Advisor** appears for the hearing, the College must appoint an **Advisor** for the absent **Party**. The College will typically try to have an **Advisor** on stand-by for a hearing. Because timing issues related to the appointment by the College of **Advisors** will generally not constitute sufficient good cause to postpone or delay the hearing, it is important that **Parties** notify the **Title IX Coordinator** as soon as possible if they do not have a hearing **Advisor**.

7. What is an Advisor's role during scheduled meetings with the Party?

During meetings with the **Title IX Coordinator** or **Investigator**, **Advisors** play a support role for the **Party**, and cannot speak on behalf of the **Party**. The **Party** or **Advisor** may ask to speak privately during meetings so the **Advisor** can provide advice or offer emotional support.

If the **Parties** agree to engage in an informal resolution process, a **Party** may ask their **Advisor** to attend meetings and/or advise them during that process as well.

8. What is an Advisor's role outside of meetings?

The **Advisor's** role outside of scheduled meetings is to provide general support and information to the **Party** and to assist the **Party** in formulating responses to evidence and to the investigation report (if the **Party** wishes to do so), as well as preparing for the hearing.

9. What is the Advisor's role at the hearing?

The **Advisor** plays a prominent role at the hearing. The Title IX regulations require that all cross-examination be conducted by the **Advisor**, and not by the **Party** themselves. This includes cross-examination of other **Parties** and the other **Parties' Witnesses**. Cross-examination under Title IX simply means that the **Advisor** must relay a **Party's** desired questions of other **Parties** and **Witnesses**. The **Advisor** must not engage in aggressive, abusive questioning of any **Party** or **Witness**. In addition, under the College's hearing procedure, the **Advisor** may also make the Opening and Closing Statements. The **Advisor** may object to questions posed by other **Parties** and **Advisors**. The **Advisor** may also be asked questions by the **Adjudicator**.

If an **Advisor** is retained in sufficient time prior to the hearing, the **Advisor** can also assist the **Party** in preparing Opening Statements, preparing the **Party** for questioning, formulating questions to be posed to other **Parties** and **Witnesses**, and preparing Closing Statements (including a discussion of reasonable proposed sanctions, based upon any aggravating and mitigating circumstances).

Advisors, like other participants in the hearing, are required to comply with the College's rules of decorum at all times at the hearing. **Advisors** should refer to Section O.6 of the Policy and Section B of this Guide for more detailed information about the hearing procedure.

10. What is the Advisor's role in appeals?

A **Party** may request that an **Advisor** assist them in preparing an appeal or responding to the appeal request of another **Party**. Section O.9 of the Policy provides more detailed information about the appeal process.

11. Is the Advisor's involvement in a Grievance Procedure confidential?

Yes. Other than participation, preparation and assistance to help a **Party** in a **Grievance Procedure**, including preparing for a hearing, the **Advisor** must keep confidential the **Advisor's** work and involvement, including the identities of the **Parties** and **Witnesses**. At the discretion of the **Title IX Coordinator**, an **Advisor** may be required to sign a non-disclosure agreement acknowledging these restrictions.

12. Can a Party's Advisor be required to disclose communications between the Party and the Party's Advisor?

With few exceptions, no. If the **Advisor** is an attorney, communications between the attorney-**Advisor** and the client-**Party** are confidential by virtue of the attorney-client privilege. The Title IX regulations emphasize that a **Party** who chooses a non-attorney **Advisor** should not be disadvantaged because the **Advisor** is not an attorney. Therefore, Colby has adopted a rule that communications between a **Party** and the **Party's Advisor** are not relevant evidence and are not admissible at the live hearing, whether during cross-examination or in questions from the **Adjudicator**. Nor may an **Investigator** require disclosure of those communications as part of an investigation.

There are limited exceptions. Communications between a **Party** and the **Party's Advisor** are not confidential if confidentiality has been waived by the **Party**. An **Advisor** must disclose such communications if the **Advisor** reasonably believes disclosure is necessary to prevent substantial bodily harm or death to a **Party** or another person, or to prevent the **Party** from committing a crime.

B. LIVE HEARING GUIDE

This section provides **Complainants, Respondents, Advisors** and **Adjudicators** with information to guide them through the live hearing portion of the Title IX **Grievance Procedure**. This Guide must be read in conjunction with the Title IX Policy, the most recent version of which is available on the College's website. Terms in bold have a particular meaning which are defined in the Title IX Policy.

Any reference to **days** in this Guide has the same meaning as in the Title IX Policy: A "business day," Monday through Friday, and does not include days when the College is officially closed. Please check the College calendar, because Colby does not close on all federal or state holidays, but may also be closed at other times.

1. Pre-Hearing Process

- a. The pre-hearing process begins once the **Title IX Coordinator** forwards the investigation report to the **Parties** and their **Advisors**. At the same time, the Title IX Coordinator will appoint a single, trained **Adjudicator**. The **Adjudicator** cannot be the **Investigator** or **Title IX Coordinator** or a **Deputy Title IX Coordinator**.

Parties have five **days** to:

- 1) Submit responses to the report, including any claims of procedural error in the **Grievance Procedure**), and
- 2) Notify the **Title IX Coordinator** in writing if they have a reasonable concern that the **Adjudicator** has a conflict of interest or bias, and the basis for such concern. The **Title IX Coordinator**, in consultation with other College officials as necessary, will consider the issue and has the discretion to continue with the **Adjudicator** or appoint a new **Adjudicator**.

- b. The **Title IX Coordinator** shall forward the investigation report and any written responses to the **Adjudicator** in sufficient time for the **Adjudicator** to review in advance of the hearing.
- c. The date, time and location of the live hearing will be set by the **Title IX Coordinator**. The hearing will not be scheduled for a date that is less than ten **days** after the **Parties** have provided their written responses to the investigation report. Written notice of the hearing will be provided by the **Title IX Coordinator** to the **Parties, Advisors, Witnesses**, the **Investigator** and other hearing participants. At the sole discretion of the **Adjudicator**, a hearing may be conducted in whole or in part by videoconference and noted in the hearing notice.
- d. Within no more than three (3) **days** after receiving notice of the hearing date, **Parties** must contact the **Title IX Coordinator** to identify any participants other than the **Parties, Advisors, Witnesses**, the **Investigator** that a **Party** wishes to have present at the hearing to provide testimony. If a **Party** wishes to present a **Witness** at the live hearing who did not provide information to the **Investigator**, the **Party** must notify the **Title IX Coordinator** in writing, within three **days** after receiving notice of the hearing date, of the name of the **Witness** and provide a description of the subject matter of the testimony. In turn, the **Title IX Coordinator** shall provide a copy of the notice to the other **Parties**. The **Adjudicator** will determine whether the **Witness** will testify.
- e. Likewise, a **Party** must also notify the **Title IX Coordinator** in writing, if a **Party** wishes to be in a separate room from another **Party** at the hearing. In such cases, technology will be utilized to allow the **Parties, Advisors** and **Adjudicator** to see and hear the person asking and answering questions.
- f. To facilitate an orderly hearing, the **Title IX Coordinator** may request that the **Parties**, either separately or together, and their **Advisors** attend a pre-hearing conference with the **Adjudicator** and/or **Title IX Coordinator**, to address any details for the hearing.
- g. The **Title IX Coordinator** will notify the **Parties** that they may request an informal resolution process (see Section O.3 of Policy) at any time prior to the conclusion of the hearing. An informal resolution process can be pursued only if all **Parties** are willing.
- h. The College may postpone a scheduled hearing for good cause (as defined in the Title IX policy.) Any request by a **Party** to continue the hearing for good cause, or to extend any other deadline, shall be submitted in writing to the **Adjudicator** and the **Title IX Coordinator** for consideration. Decisions on such requests will be made in light of the reason for the request, including whether the reason is for good cause and the impact on the hearing process.

- i. **Parties** are required to have an **Advisor** at the live hearing. An **Advisor** may be, but does not have to be an attorney. If a **Party** does not have a hearing **Advisor**, the **Party** must notify the **Title IX Coordinator** as soon as possible after receiving notice of the hearing. The College will then appoint a hearing **Advisor** at no cost to the **Party**. The College will endeavor, if possible, to appoint that **Advisor** within a reasonable number of **days** before the hearing to provide time for the **Advisor** to prepare with the **Party** for the hearing, including preparation of questions for cross-examination. If an **Advisor** does not appear for the hearing, the College is obligated to appoint another **Advisor** for the **Party** to assist them at the hearing. Likewise, if neither the **Party** nor the **Advisor** appears for the hearing, the College must appoint an **Advisor** for the absent **Party**. The College will typically try to have an **Advisor** on stand-by for a hearing. Because timing issues related to the appointment by the College of **Advisors** will generally not constitute sufficient good cause to postpone or delay the hearing, it is important that **Parties** notify the **Title IX Coordinator** as soon as possible if they do not have an **Advisor** for the hearing. A **Party** may not “fire” an **Advisor** appointed for the **Party** unless the **Advisor** fails or refuses to conduct cross-examination.
- j. The College will make a video or audio recording or transcript of the hearing, which will be made available to the **Parties** for inspection and review following the hearing.

2. Who May Attend the Live Hearing

- a. Federal law limits who can attend the hearing. The **Adjudicator**, the **Title IX Coordinator** and any **Deputy Title IX Coordinators**, the **Investigator**, the **Parties** and their **Advisors**, and the College’s Office of General Counsel (or its designee) may attend the hearing in its entirety.
- b. At the hearing, the College and the **Parties** have an equal opportunity to present **Witnesses** who have provided information to the **Investigator**. The **Adjudicator** may, in his or her discretion, permit others, including expert witnesses, to testify if they can offer relevant evidence. **Witnesses** will appear only for their own testimony, but may be asked to remain on call throughout the hearing. **Witnesses** will not be permitted to be present for the testimony of any **Party** or other **Witness**, except as allowed by the **Adjudicator** in the **Adjudicator’s** sole discretion.

3. Conduct of Hearing

- a. The College uses the preponderance of evidence standard for determining responsibility for violations of the Title IX Policy and in all other conduct proceedings for **Students** and **Employees**. The burden of proof is on the College and not on any **Party**.

- b. The **Adjudicator** shall be responsible for conducting the live hearing, or may delegate this to another properly trained person, but shall remain responsible for making the determination of a **Party's** responsibility and sanction, if applicable.
- c. At the hearing, copies of the investigation report and any written responses shall be made available to the **Parties** and their **Advisors** for their reference at the hearing. The investigation report is automatically included as evidence in the hearing record.
- d. The College's Office of General Counsel may provide information or advice to the **Adjudicator** if asked, or provide guidance to participants during the hearing as needed.
- e. **Parties** and **Witnesses** are expected to testify truthfully, and a failure to do so may result in disciplinary action under the Student Code of Conduct or applicable policies in the faculty or staff handbook.
- f. At the start of the hearing, the **Adjudicator** will review the rules of decorum with the participants (see section 4 below), and all participants will be asked to acknowledge that they understand and will abide by these rules. The **Adjudicator** will also review the rules of decorum with each **Witness**.
- g. A **Party**, either individually or by their **Advisor**, may present Opening and Closing Statements, each of which shall be no more than ten minutes in length. The **Adjudicator** may terminate an Opening or Closing Statement for exceeding the time limit.
- h. The **Adjudicator** may terminate or adjourn the hearing or take other appropriate action for violations of the rules of decorum or other improper presentation or behavior.
- i. The **Adjudicator** may request that the College have the **Investigator** testify about the investigation report. The **Investigator** may be subject to cross-examination.
- j. After Opening Statements and after any presentation of the investigation report by the **Investigator**, the **Complainant(s)** presents evidence. With the assistance of the **Advisor**, a **Complainant** may testify and offer the testimony of supporting **Witnesses** in the order of the **Complainant's** choosing. The **Complainant(s)** may not present a **Respondent** as a witness, without the **Respondent's** consent.
- k. The Title IX regulations require that a **Respondent's Advisor** (and not the **Respondent**) may cross-examine the **Complainant(s)**. The **Advisor** may also

cross-examine the **Complainants' Witnesses**. The rules of decorum must be followed in cross-examinations.

- l. When the **Complainant(s)** has completed the presentation of evidence, the **Respondent(s)**, with the assistance of the **Advisor(s)**, may testify and offer the testimony of supporting **Witnesses** in the order of the **Respondent's** choosing. The **Respondent(s)** may not present a **Complainant** as a witness, without the **Complainant's** consent.
- m. The Title IX regulations require that a **Complainant's Advisor** (and not the **Complainant**) may cross-examine **Respondent(s)**. The **Advisor** may also cross-examine **Respondents' Witnesses**. The rules of decorum must be followed in cross-examination.
- n. Because **Parties** do not bear the burden of proof, rebuttal testimony is generally not permitted, except as determined at the discretion of the **Adjudicator** in the interest of fairness.
- o. The **Adjudicator** may ask questions of the **Parties**, their **Advisors**, the **Investigator**, and any **Witnesses**.

4. Evidence; Sanction Evidence

- a. The **Adjudicator** shall rule on the relevance of evidence, including the relevance of a cross-examination or other question before the question is answered (and explain any decision to exclude a question as not relevant).
- b. Evidence will be considered by the **Adjudicator** if it is relevant, and is of the type on which a reasonable person relies in their ordinary affairs. Evidence is relevant if it tends to make a fact at issue more or less likely to have occurred. Evidence may be favorable or unfavorable to a **Party**. The **Adjudicator** determines relevance and other issues governing the admissibility of evidence, with or without objection of a **Party** or **Advisor**. The **Adjudicator** may defer ruling on relevance or other issues of admissibility until the **Adjudicator's** written determination, and will explain the ruling in that determination.
- c. Evidence about a **Complainant's** sexual predisposition or prior sexual behavior is not relevant, unless such evidence: (1) is offered to prove that someone other than a **Respondent** committed the alleged conduct, or (2) concerns specific incidents of a **Complainant's** prior sexual behavior with a **Respondent** and is offered as evidence of **Consent**.
- d. Evidence of sex stereotypes is not relevant.
- e. Evidence relating to a **Party's** medical, psychological or similar records is not admissible unless the **Party** has consented in writing to the disclosure of those

records. If a **Party** consents to their disclosure, they must be shared with the other **Party(ies)**.

- f. Evidence that is protected from disclosure by the attorney-client privilege or other legally recognized privilege or immunity in the State of Maine is not admissible unless the holder of the privilege has waived the privilege. Similarly, communications between a **Party** and the **Party's Advisor** are not admissible unless the confidentiality of the communications has been waived.
- g. A **Party** or **Advisor** may object to questions and may state the basis of the objection (e.g. relevance or privilege). The **Adjudicator** may or may not request further discussion of the objection. Except at the request of the **Adjudicator**, discussion by a **Party** or **Advisor** of an objection other than stating the basis for the objection is not permitted.
- h. If a **Party** or **Witness** does not submit to cross-examination during the hearing, the **Adjudicator** shall not rely on any statement of that **Party** or **Witness** in reaching a determination. However, any statement made in video evidence showing the underlying incident that is the basis of the **Complaint** may be relied upon, even if the **Party** or **Witness** does not submit to cross-examination. The **Adjudicator** shall not draw any inference in regard to **Sexual Harassment** based solely on a **Party's** or a **Witness'** absence from the hearing or refusal to answer questions.
- i. During Closing Statements, the **Party** or **Advisor** is encouraged to recommend sanctions to the **Adjudicator**, including evidence of any mitigating or aggravating circumstances that a **Party** believes should be considered by the **Adjudicator** in issuing any sanctions. Examples of mitigating or aggravating circumstances include:
 - Prior disciplinary offenses or lack thereof;
 - A pattern of misconduct or lack thereof;
 - Multiple offenses;
 - Bad faith obstruction of the proceeding by intentionally failing to comply with rules or orders, including the rules of decorum;
 - Submission of false evidence, false statements or other deceptive practices;
 - Vulnerability of **Complainant**;
 - Personal or emotional challenges;
 - Physical or mental disability or impairment;
 - Participation in counselling or other timely and good faith efforts to address the consequences of **Sexual Harassment**;
 - Remorse, or refusal to acknowledge wrongful nature of conduct.
- j. At the conclusion of the hearing, after Closing Statements, the **Adjudicator** will declare the record closed. The **Adjudicator** may, however, request additional input from the College or the **Parties** concerning possible sanctions, during the

time between the hearing and the issuance of the **Adjudicator's** determination. **Parties** will be copied on any such request, and will be provided a reasonable opportunity to provide written comment to any additional submission.

5. Rules of Decorum

- a. **Parties, Advisors** and other hearing participants must behave in a respectful manner, including maintaining a respectful tone of voice, not interrupting others when they are speaking, and otherwise conducting themselves in a manner befitting the seriousness of the hearing process. No **Party** or **Advisor** may act in a manner seeking to intimidate, harass, badger or unduly embarrass any other **Party, Advisor** or **Witness** through words, gestures or other means.
- b. No **Party, Advisor** or **Witness** may record the hearing. No cell phone or other electronic devices may be used during the hearing without the prior permission of the **Adjudicator**.
- c. The **Adjudicator** may enforce the rules of decorum, including adjourning the live hearing and imposing reasonable sanctions on any **Party, Witness** or **Advisor** who violates the rules.

6. Adjudicator's Written Determination

- a. The **Adjudicator** shall issue a written determination, typically within fifteen (15) **days** of the conclusion of the hearing. The written determination shall include the following:
 - Identification of all the allegations potentially constituting **Sexual Harassment** as defined in the Title IX regulations and the College's Title IX policy;
 - A description of the procedural steps taken from receipt of the **Formal Complaint** through the determination, including notifications to the **Parties**, interviews with **Parties** and **Witnesses**, site visits, methods used to gather other evidence, and hearings held;
 - Findings of fact supporting the determination;
 - An explanation of the basis for including or excluding any evidence on which the **Adjudicator** deferred ruling during the hearing;
 - A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the College imposes on the **Respondent**, and whether remedies designed to restore or preserve equal access to the College's education programs and activities will be provided to the **Complainant**;
 - The College's procedure and grounds for the **Complainant** and **Respondent** to appeal the determination (or dismissal).
- b. The written determination shall be provided to the **Parties** simultaneously by the **Title IX Coordinator**, typically via e-mail.

- c. The determination concerning responsibility becomes final either on the date that the College provides the **Parties** with the written determination of the results of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which the appeal would no longer be considered timely. A complaint filed with the Office for Civil Rights or Maine Human Rights Commission is not an appeal for the purposes of determining when a determination of responsibility becomes final.