



		Policy Section:	Student Services
Policy Number:	5401-18	Policy Title:	Judicial Conduct Hearing
Original Effective Date:	7/14/2020	Department:	Student Life
Date Last Revised:	7/1/2022		

Policy Statement

Title IX sexual misconduct complaints that are investigated under the guidelines of Cairn policy (5501-02) Sexual Misconduct, and determined to be legitimate reports with supporting evidence to assess for responsibility, will be brought to a judicial conduct hearing called for and arranged by the Title IX Coordinator.

Purpose

A Judicial Conduct Hearing provides the complainant and respondent in a Title IX sexual misconduct incident with a fair and impartial hearing in front of a panel of trained Cairn University Title IX Team members. This hearing takes place in an organized format with a presentation of the investigation, examination, and cross-examination of both parties and witnesses. The panel is responsible to guide the procedure and render a binding decision.

Scope

A Judicial Conduct Hearing is only conducted after an initial Title IX preliminary investigation finds that the initial notice or report of a sexual misconduct incident to be a credible account and needs to be adjudicated by this panel. After initial report of an incident, the University, through the Title IX Coordinator, conducts preliminary investigation and then determines if mediation is possible and acceptable by both parties. When mediation is utilized as the path towards resolution, the hearing panel is not required. In the event mediation is not used or acceptable, the Title IX Coordinator will ask the lead investigator to prepare a formal investigation for the purpose of verifying a potential Title IX infringement and preparing for a conduct hearing.

Judicial Conduct Hearing Panelists

In order for Judicial Conduct Hearings to be conducted in a professional and competent manner, the University forms a standing committee of trained faculty and staff into a working Title IX Team. Committee membership is evaluated each year in the summer as the Provost makes new assignments to the faculty committee structure. At the same time, the Vice President of Human Resources and the University Title IX Coordinator review the staff assignments to the committee. Faculty and staff named as members of the Title IX Team receive formal training to become prepared for their role in investigations and hearings. Within the team, select individuals will be designated to specialize as investigators or as hearing panelists. When scheduling conflicts or conflict of interest issues occur, additional staff and faculty can be provided basic hearing panel training. Panelists acknowledge they will see and hear sensitive and delicate content and be able to make a fair and impartial judgement.

Standard of Evidence

Title IX Incidents brought to a Judicial Hearing Panel will be examined from a “clear and convincing” standard of evidence. There is no distinction in the standard of evidence as to whether the respondent is a student or a faculty or staff member.

Process and Order of Events

1. Establishing the panel and scheduling the hearing.

Upon the lead investigator's notification that the formal investigation is nearing completion, the Title IX Coordinator will begin to establish plans for a judicial conduct hearing. The items to be determined at that time are the panelists, the location(s) of the hearing, the party and witness list, advisors, and the technology needed.

- a) Title IX Coordinator or designee contacts Title IX Team members to ascertain their availability for the panel. Prioritization of the panel composition should be trained panel specialists first, investigators second and finally other staff and faculty who can be trained pre-hearing. Three panelists are needed with one serving as the presiding panelist.
- b) Title IX Coordinator works with involved parties to communicate the date, time, and location of the hearing. Location should be one room having enough room for the panel, the parties, and any witnesses and advisors. In the event one of the parties is reluctant to be in the same room, a second location must be secured and the panel will take place live and virtually at the same time. When separate locations are utilized, all parties must be able to see and hear one another.
- c) One advisor each is permitted for the complainant and the respondent. If either party does not have an advisor, the institution will arrange for them to have one. The advisor can be a friend, a parent, a peer, or an attorney. The advisor is permitted to cross-examine and ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. The advisors ask questions on behalf of the complainant and respondent who are not permitted to ask the other party any question directly.
- d) The Title IX Coordinator or presiding panelist will arrange with University Technology Services for the hearing to be audio or audio and visually recorded and will be available for review. Due to confidentiality, a recording will not be released to the parties; only available for inspection and review.

2. The lead investigator will provide a list of the parties and witnesses to the Title IX Coordinator for contact and scheduling.

- a) Participants in the hearing will be notified in writing and will be sent a description of the hearing informing the reader what to anticipate during the hearing.
- b) Participants will be asked to sign the participation consent form stating the need for honesty and confidentiality.
- c) Participants can respond to the invitation with additional information such as the request to be in a separate room.
- d) Participants are reminded in documentation that this is a formal conduct hearing with significant implications. Standards of dress and decorum will be included in the information provided.
- e) All documentation is to be available for review by the parties and advisors ten days before the hearing date.

3. Hearing Details and Order of Events

The Title IX Coordinator will formally request one of the Title IX Team members to serve as the Presiding panelist. The presiding panelist is to verify with the additional panelists they are prepared and have access to all investigative information available. During the hearing, the presiding panelist will lead the process and work towards a fair and equitable judgment.

- a) Presiding panelist will confirm that all parties invited to the hearing are aware of the time, location, purpose, structure and limitations of the hearing.
- b) The lead investigator, in conjunction with the panel, is responsible for coordinating the layout of the room utilized for the hearing.
- c) Depending on the nature of the hearing and possibility of tensions, the lead investigator should evaluate whether assistance from the Office of Safety and Security is needed in the

- proximity to help guide each party to the hearing room and waiting area.
- d) Timing of the hearing needs to be established so it takes place at one time and in one setting. A window of two hours should be established and the presiding panelist must facilitate the event from the onset so all parties have their opportunity to respond and witnesses can be heard.
 - e) The University will not access, consider, disclose, or otherwise use a party's records maintained in connection with treatment by a physician, psychologist, or other recognized professional or paraprofessional unless they obtain the party's voluntary written consent to do so.
 - f) To protect the level of confidentiality; only the panelists, the investigator in charge of the incident, and the complainant and respondent along with their advisors may be present in the hearing room. Witnesses can be located in an adjoining space and brought in to testify as needed.
 - g) The entire proceeding is to take place with the understanding that the respondent has the presumption of being innocent of the allegations and only when the evidence is sufficiently clear and convincing will they be judged as responsible.
 - h) The presiding panelist will open the hearing by asking the investigator in charge of the incident to present the findings in the case. This is to be an unbiased presentation of the incident detailing what is alleged, who was involved, dates and times along with a recap of the salient observations made by witnesses. This material will have been provided to the panelist and both parties in advance of the hearing. Therefore, the opening presentation of the investigator is not designed to inform the panel as much as allow questions to be asked dealing with pertinent evidence of the incident.
 - i) Once the initial presentation of the case has been stated, the panel will ask the complainant questions. Following this, the panel will question the respondent. At each stage, the advisor to one party may cross-examine the other party.
 - a. During the hearing, the two parties to the incident (complainant and respondent) are not permitted to ask questions of one another.
 - b. Any cross-examination from one party to the other is to be done by the advisor of one party to the party of the other side.
 - c. The presiding panelist will be responsible for evaluating whether every question is relevant and explain any decision to exclude a question as not relevant.
 - j) Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant unless such questions and evidence about the complainant's prior sexual behavior are offered to prove someone other than the respondent committed the conduct alleged by the complainant. Questions can also be relevant if they concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.
 - k) Witnesses can be called as needed and once again, questions and cross-examinations can take place as prescribed.
 - l) If a party or witness does not submit to cross-examination at the live hearing, the panelists must not create bias from any lack of statement of that party or witness in reaching a determination regarding responsibility.
 - m) The presiding panelist will close the hearing once all questions and cross-examinations have been completed and dismiss the room occupants leaving only the three panelists.
 - n) The panel will then discuss the incident and hearing details and come to a finding on responsibility and sanctions.
 - o) The presiding panelist will document the decision of the hearing panel and submit the finding and any applicable sanctions to the two parties and the Title IX Coordinator.
 - p) The Title IX Coordinator will submit the final statements and any support materials including

the recording of the hearing into the applicable file on the protected University network drive.

Basis for Appeals

In association with the standard appeals process of Cairn University, either party can appeal a decision made by the Judicial Conduct Hearing Panel. Grounds for appeal from the determination of this panel are consistent with other University appeals:

Grounds for Appeal

1. A procedural error occurred in the investigation stage or actual hearing, which significantly influenced the outcome.
2. New evidence has become available which would substantially affect the outcome of the hearing or the sanction(s).
3. Sanctions are not proportionate to the severity of the findings

Submitting an Appeal:

An appeal must be made in writing. If the party initiating an appeal is a student it is to be addressed to the Senior Vice President and Provost and document on what grounds the appeal is being made. The submission of an appeal is to be in the hands of the Title IX Coordinator within 72 hours of the conclusion of the Judicial Conduct Hearing. The Title IX Coordinator will then submit the appeal letter, the investigator notes and the recording of the hearing to the Provost for review. The Provost will then have 72 hours to review the appeal and render a final judgment. This step is the final appeal procedure provided by the University.

Definitions

While not addressed within the context of this policy, following are terms used in the investigation, implementation, and training of matters related to Title IX, sexual misconduct, harassment and assault. Students and employees should be familiar with these terms and their definitions.

Allegations

Accusations or claims of discrimination, misconduct, or harassment.

Appeal

In a Title IX investigation, an appeal occurs when either party rejects the results of a Judicial Hearing Panel on one or more of the specific acceptable grounds for review.

Assault

Threatening behavior in the form of physical contact, and nonphysical behavior such as verbal threats, intimidation, and indecent exposure, or the intension to cause an apprehension of harmful or offensive contact.

Clear and Convincing Evidence Standard

Panelist will hear the testimony in the hearing and make a determination of responsibility only if the totality of the evidence in the incident meets the level of clear and convincing as a legal standard.

Complainant

An individual who makes a statement or claim about another person's actions and is seeking for the action to stop and the incident(s) to be investigated. Often (or sometimes) also seen as the victim. Person(s) alleging discrimination or another violation. A complainant may also be referred to as the complaining party.

Complaint

A complaint is a "notice" or "report" of alleged sexual misconduct, sexual harassment or assault, or other type of discriminatory or illegal activity given directly or indirectly to a Responsible Employee or through the

University reporting system. A complaint may be made by a complainant, a witness, or a concerned person and can be submitted anonymously.

Coercion

Unreasonable pressure on a person to perform an action or force the person to cooperate with advances. This can be in the form of threats both implied and stated. The lack of physical resistance on the part of the coerced person is not the measure of whether force or coercion has taken place.

Consent

Communication that is voluntarily expressed through words or actions making it clear that permission is given to engage in sexual activity.

- Silence is not a guarantee of consent
- Consent to one activity or one event in time does not imply consent to future sexual actions
- In order to give consent, one must be of legal age
- A person cannot give consent when they are mentally or physically incapacitated

Directly Related Evidence

At the conclusion of an investigation, the lead investigator is responsible for making a list of the Directly Related Evidence (DRE) to the case. Such evidence is deemed to be relevant and credible when discovered during the investigation. This list is a crucial part of the investigative file. Evidence not considered directly related must still be part of the file/records, yet is not presented for adjudication.

Discrimination

Any distinction, preference, advantage for or detriment to an individual compared to others that is based upon an individual's gender, race, color, age, national or ethnic origin, physical or mental disability, veteran status, pregnancy status or other protected status, that is so severe, persistent, or pervasive that it unreasonably interferes with or limits a student's ability to participate in or benefit from the University's educational program or activities, or an employee's ability to benefit from a safe and non-discriminatory workplace.

Duty to Warn

Under Title IX and the Clery Act, the legal requirement for colleges and universities to promptly alert the campus community of a significant emergency or dangerous situation involving an immediate threat to the health or safety of students or employees on campus.

Finding

A conclusion of judgment reached by evaluating substantiated facts.

Grounds for Appeal

Cairn's policy on judicial appeals allow for appeals when one or more of the following grounds exist:

- A procedural error occurred in the investigation or hearing which significantly impacted the outcome
- New evidence has become available which would substantially impact the outcome or the sanction(s)
- Sanctions are not proportionate to the severity of the findings.

Incapacitated Person

A person who is impaired due to drugs, alcohol, injury, illness, sleep, physical restraint, or the taking of medications. Such person is not able to give consent.

Informal Dispute Resolution

In the context of Title IX, the mediation method used to resolve a complaint that does not involve a violation of assault or an employee versus a student. Mediation requires the cooperation and participation of the complainant(s) and respondent(s).

Investigation

A systematic format followed to gather and assess information about an incident once notice is received of an alleged violation.

Judicial Hearing Panel

A systematic, formal hearing used for Title IX when informal dispute resolution is not possible.

Non-Consensual Contact

Any intentional sexual touching, however limited or slight, with any object, by a man or a woman upon a man or a woman, that is performed without consent being given, or by force. This would include intentional contact with the breasts, buttock, groin, or genitals, or touching a person with these body parts, or making a person touch another or themselves with these body parts. This can also include touching that does not involve these specific body parts but is done in an overtly sexual manner.

Non-Consensual Sexual Intercourse

Any sexual intercourse, however limited or slight, with any object, by a man or a woman, upon a man or a woman, that is without consent being given, or by force. This would include penetration of any orifice or genital area by a body part or any object, no matter how slight or limited the contact.

Notice

In the context of Title IX, any report or information provided, directly or indirectly, about an incident of sexual harassment or assault. Also referred to as “report” or “complaint”.

Panelist

A faculty or staff member of the University Title IX Team who has been trained on Title IX and Judicial Conduct Hearings and has been selected to serve in an active Judicial Hearing.

Presiding Panelist

One of the panelist in a hearing is selected before the actual hearing to be the leader in organizing the logistics and presiding over the hearing.

Remedy; Remedial Steps

Steps taken to alleviate the continued environment, which may have led to the complaint between complainant(s) and respondent(s). Remedial steps can be implemented during an investigation, or following the conclusion of mediation or a formal hearing.

Report

In the context of Title IX, any notice or information provided, directly or indirectly, about an incident of sexual harassment or assault. Also referred to as “notice” or “complaint”.

Respondent(s)

Individual(s) accused of a violation. May also be referred to as “accused” or “responsible party.”

Responsible Employees

In the context of Title IX, Individuals who 1) have the duty to report any type of misconduct or detrimental behavior to appropriate officials; 2) have the ability to take action to stop or prevent continued harassment, and/or 3) would be someone a student would reasonable believe has such authority or responsibility.

Responsible Employees are designated as:

- Resident Life employees including Resident Assistants and Hall Coordinators, Resident Directors, and the Director of Resident Life;
- Dean of Students

- Full-time employee working in the Student Life office complex
- Faculty
- Coaches and full-time employees of the Athletic Department
- Members of the Office of Safety and Security
- Staff & Administrators

Retaliation; Retaliatory Harassment

Any adverse action taken against an individual because they have alleged harassment, supported a party bringing a grievance, or assisted in providing information relevant to a claim of harassment or civil rights grievance.

Sanctions

Consequences imposed on individuals found to have been in violation of a rule or standard. Sanctions may be minor or major such as probation, suspension, dismissal, or permanent expulsion. Sanctions are made considering both the immediate incident as well as previous violations.

Sexual Exploitation

Persons sexually exploit other persons when they take non-consensual sexual advantage of others to gain their own advantage or the advantage of a third party. This behavior would not normally fall under the other defined terms of sexual misconduct or assault. Examples could include:

- Invasion of sexual privacy
- Non-consensual video or audio-taping of sexual activity involving another person
- Engaging in voyeurism or exhibitionism
- Exposing one's genitals, breasts, or buttocks, or inducing another person to expose their own genitals, breasts, or buttocks
- Stalking of a sexual nature where the conduct is aimed at a person or group of people, is unwelcome, and causes the victim(s) to have reasonable fear for their safety.

Sexual Harassment

Sexual harassment is unwelcome verbal, non-verbal or physical conduct of a sexual nature and can include unwelcome sexual advances, requests for sexual favors, and other conduct of a sexual nature. Conduct is unwelcome if the individual toward whom it is directed did not request or invite it and regarded the conduct as undesirable or offensive. The unwelcome behavior may be based on threats or promises from someone in a position of power or authority, the creation of a hostile environment, or retaliation for reporting misconduct.

Under Title IX, Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

- A school employee conditioning educational benefits on participation in unwelcome sexual conduct (quid pro quo); or
- Unwelcome conduct that a reasonable person would determine is so severe, pervasive and objectively offensive that it effectively denies a person equal access to the school's educational program or activity; or
- Sexual assault (as defined by the Clery Act), dating violence, domestic violence, or stalking as defined in the Violence against Women Act (VAWA).

Sexual Misconduct

Any form of sexual contact between two or more individuals that is considered to be outside of the parameters of a healthy and appropriate sexual relationship described in the Bible; that being a relationship between a married man and woman.

Standard of Evidence

Legal term for the evidentiary status that must be reached to find a person responsible for the accusations leveled their way. Cairn utilizes a clear and convincing evidence standard.

Title IX

The 1972 amendments to the Higher Education Act of 1965 which states, “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.”

Title IX Coordinator

The person at Cairn responsible to oversee Title IX matters and investigations.

Title IX Deputy Coordinator

The person at Cairn who serves as an alternate to the Title IX Coordinator, and who is responsible for Title VII matters and investigations.

Title IX Investigator

One of several individuals specifically trained to lead or assist in an investigation of an alleged Title IX violation.

Witness

Any person who is able to provide first-hand information regarding a complaint, allegation, or dispute.

Signed: _____
President’s Cabinet Member

Date: _____

**Judicial Conduct Hearing
Complaining & Responsible Party Consent Form**

I, _____(print)_agree to participate in a Judicial Conduct Hearing as required under Title IX. By signing this participant consent form, I acknowledge the following:

1. I am waiving my rights to privacy in the alleged behavior/incident being discussed. I acknowledge members of the committee will hear details of my account in respect to an alleged behavior/incident being investigated.
2. I acknowledge I may bring an advisor with me to the hearing. The advisor may be a parent, peer, member of the Cairn community, or a lawyer. The advisor may talk with me and will be the only person permitted to question or cross-examine the other party and any witnesses on my behalf.
3. I acknowledge I may work with the Title IX investigator to call witnesses on my behalf. Witnesses must be willing to sign a participation consent form, attend the hearing, and respond to questions asked by the panelists or advisor from the opposing party. Witnesses are only permitted to be present during their testimony.
4. I acknowledge the Presiding Panelist will attempt to keep the hearing to a time span of no more than 90-120 minutes. At the conclusion of the hearing, the panelists will deliberate apart from my presence and the Title IX Coordinator will inform me of the panel’s decision.
5. I have read the entire Judicial Conduct Hearing Policy and have had any questions answered by the Office of Student Life.
6. I agree to abide by the same pledge of confidentiality as all other participants in the Hearing. I will only discuss this alleged behavior/incident and the hearing with my family, those involved directly at the hearing and the Office of Student Life.

Name Printed

Signature

Date

**Judicial Conduct Hearing
Witness Consent Form**

I, _____(print)_agree to participate in a Judicial Conduct Hearing as required under Title IX. By signing this participant consent form, I acknowledge the following:

1. I am waiving my rights to privacy in the alleged behavior/incident being discussed. I acknowledge members of the committee will hear details of my account with respect to an alleged behavior/incident being investigated to which I am a witness.
2. I acknowledge members of the panel or an advisor will ask me questions. The advisor may be a parent, peer, member of the Cairn community, or a lawyer. The advisor will talk with me and will be the only person from the opposing party permitted to question or cross-examine.
3. Witnesses are only permitted to be present in the hearing during their testimony.
4. I acknowledge the presiding panelist will attempt to keep the hearing to a time span of no more than 90-120 minutes. At the conclusion of the hearing, the panelists will deliberate apart from my presence and the Title IX Coordinator will inform me of the panel’s decision.
5. I have read the entire Judicial Conduct Hearing Policy and have had any questions answered by the Office of Student Life.
6. I agree to abide by the same pledge of confidentiality as all other members of the panel. I will only discuss this alleged behavior/incident and the hearing with my family, those involved directly at the hearing and the Office of Student Life.

Name Printed

Signature

Date

**Judicial Conduct Hearing
Advisor Consent Form**

I, _____(print)_agree to participate in a Judicial Conduct Hearing as required under Title IX. By signing this participant consent form, I acknowledge the following:

1. I am willing to represent the interest of the party who has asked me to be their advisor.
2. I acknowledge I will be the only person permitted to question or cross-examine the other party and any witnesses on my advisee’s behalf.
3. I acknowledge I must ask questions that are relevant to the current incident and that I will do so in a civil and respectful manner. Failure to conduct my role with integrity and sensitivity could cause me to be removed from the hearing.
4. I acknowledge the presiding panelist will attempt to keep the hearing to a time span of no more than 90-120 minutes. At the conclusion of the hearing, the panelists will deliberate apart from the participants.
5. I have read the entire Judicial Conduct Hearing Policy and have had any questions answered by the Office of Student Life.
6. I agree to abide by the same pledge of confidentiality as all other members of the panel. I will only discuss this alleged behavior/incident and the hearing with, those involved directly at the hearing.

Name Printed

Signature

Date

**Judicial Conduct Hearing
Panelists Consent Form**

I, _____ (print) agree to participate in a Judicial Conduct Hearing as required under Title IX. By signing this participant consent form, I acknowledge the following:

1. I am willing to use my training as part of the Title IX Team to serve as a panelist.
2. I acknowledge I do not have a conflict of interest with any party involved in the hearing.
3. I acknowledge that I will come to the hearing prepared having read the initial investigation report and kept an unbiased mindset ready to hear the presentation and listen to the responses of both parties and witnesses.
4. I acknowledge that I will do my part to ask appropriate questions to reveal all aspects of the incident. If I am asked to serve as the lead panelist, I will make every effort to keep the hearing to a time span of no more than 90-120 minutes. At the conclusion of the hearing, the panelists will deliberate apart from the participants and the lead panelist will document the findings.
5. I have read the entire policy on Judicial Conduct Hearings and have had any questions answered by the Office of Student Life.
6. I agree to abide by the same pledge of confidentiality as all other members of the panel. I will only discuss this alleged behavior/incident and the hearing with, those involved directly at the hearing and the Title IX Coordinator.

Name Printed

Signature

Date

**Judicial Conduct Hearing
Technology Support Consent & Privacy Form**

I, _____ (print) agree to participate in a Judicial Conduct Hearing as required under Title IX. By signing this participant consent form, I acknowledge the following:

1. I am willing to use my training as an audio visual/computer technician to participate in this confidential Title IX hearing.
2. I acknowledge I do not have a conflict of interest with any party involved in the hearing.
3. I acknowledge that I will come to the hearing prepared to record the hearing and will maintain standards of professionalism at all times. If the audio/visual recording is not working I will inform the lead panelist who will suspend the hearing until the problem has been solved.
4. Upon the conclusion of the event, I will make a file of the recording, which will be given to the lead investigator and Title IX Coordinator for the appropriate Title IX file. Any other copy of the file will be destroyed.
5. I have read the entire policy on Judicial Conduct Hearings and have had any questions answered by the Office of Student Life.
6. I agree to abide by the same pledge of confidentiality as all other members of the panel. I will only discuss this alleged behavior/incident and the hearing with, those involved directly at the hearing and the Title IX Coordinator.

Name Printed

Signature

Date