

Formal Grievance Protocol
As Required by the U.S. Department of Education Title IX Regulations
(34 C.F.R. § 106.45, effective August 14, 2020)

TABLE OF CONTENTS

<u>Section I:</u>	Introduction
<u>Section II:</u>	Scope of Protocol
<u>Section III:</u>	USDOE Statements of Equitable Treatment
<u>Section IV:</u>	Formal Grievance Process
	A. Formal Complaint
	B. Title IX Coordinator Initial Responsibilities
	C. Notice of Allegations
	D. Investigation Procedure
	E. Adjudication
	F. Appeals
	G. Informal Resolution
<u>Section V:</u>	Retaliation

Formal Grievance Protocol
As Required by the U.S. Department of Education Title IX Regulations
(34 C.F.R. § 106.45, effective August 14, 2020)

I. Introduction

As required by the U.S. Department of Education (USDOE), effective August 14, 2020, this Formal Grievance Protocol (Protocol) addresses certain allegations of sexual misconduct subject to the Title IX Regulations as set forth in [Section II](#), below. This Protocol contains citations to the applicable sections of the Title IX Regulations (34 C.F.R. Part 106) throughout. For the complete Vanderbilt Sexual Misconduct Policy (the Policy), which addresses sexual misconduct beyond the scope of the Title IX Regulations, please click [here](#).

This Formal Grievance Protocol proceeds in four additional sections:

[Section II](#) defines the scope of this Formal Grievance Protocol. Under the Title IX Regulations, sexual harassment as defined by the Title IX Regulations (a subset of sexual misconduct prohibited by the Policy) must be investigated and adjudicated according to the procedures set forth in this Protocol. Although the Title IX Regulations narrowly define sexual harassment, Vanderbilt remains committed to providing an environment that is free from sexual misconduct in all its forms. To that end, sexual misconduct that is not sexual harassment as defined by the USDOE, or that does not meet the jurisdictional requirements under the Title IX Regulations, will still be investigated and addressed under the Policy.

[Section III](#) contains the USDOE's statements regarding equitable treatment under the Title IX Regulations. Equitable treatment includes the provision of supportive measures and waiting until the grievance process ends to make conclusions as to whether a person violated the Policy.

[Section IV](#) contains Vanderbilt's Formal Grievance Process, as required by the Title IX Regulations, to investigate and adjudicate allegations of sexual harassment. This section provides information on filing a Formal Complaint of sexual harassment, the investigation process, the role of the Title IX Coordinator, Title IX's live hearing requirements, the appeals process, and related topics.

[Section V](#) explains that Vanderbilt will not retaliate against any person for that person's involvement in the Title IX process.

This Formal Grievance Protocol, as dictated by the USDOE, along with the comprehensive Vanderbilt Sexual Misconduct Policy, are intended to define, address, and remedy sexual misconduct for members of the Vanderbilt community (defined for purposes of this Protocol to include faculty, staff, students,

postdocs, trainees, and those who use Vanderbilt facilities as well as those who are seeking to participate in Vanderbilt’s educational and employment programs, such as applicants for admission or employment).

Vanderbilt prohibits sexual misconduct by members of the Vanderbilt community. The prohibition applies regardless of the gender of the individuals involved and includes sexual relationships involving a status differential and those between peers, colleagues, and co-workers.

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

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

*Title IX Coordinator
110 21st Avenue South
Baker Building, Suite 975
Nashville, TN 37203
Phone: 615-343-9004 (V/TDD)
Email: titleix@vanderbilt.edu
<https://www.vanderbilt.edu/title-ix/>*

II. Scope of Protocol

This Formal Grievance Protocol, as required by the Title IX Regulations (§ 106.44(a)), applies to conduct that meets both:

- A definitional requirement: conduct on the basis of sex that constitutes “sexual harassment” and
- A jurisdictional requirement: conduct that relates to a Vanderbilt “education program or activity” against a person in the United States on or after August 14, 2020.

A. Definitional Requirement

“Sexual harassment” is defined in the Title IX Regulations (§ 106.30) to be conduct on the basis of sex that satisfies one or more of the following:

1. A Vanderbilt faculty or staff member/employee conditioning the provision of an aid, benefit, or service on an individual’s participation in unwelcome sexual conduct (“quid pro quo”);

2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to Vanderbilt's education program or activity; or
3. Sexual assault, dating violence, domestic violence, or stalking. (These terms are defined in the Definitions section of the Vanderbilt Sexual Misconduct Policy.)

“Sexual misconduct” is a broader term that covers other sex-based conduct beyond the USDOE’s “sexual harassment” definition. Sexual misconduct that does not satisfy the USDOE’s definition of “sexual harassment” may be addressed under alternative procedures, as provided in the Vanderbilt Sexual Misconduct Policy, instead of this Protocol.

B. Jurisdictional Requirement

An “education program or activity” includes locations, events, or circumstances over which Vanderbilt exercises substantial control over both the Respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by Vanderbilt. The Title IX Regulations exclude any “education program or activity” that does not occur in the United States. (§ 106.44(a).)

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

C. Other Definitions

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

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

III. USDOE Statements of Equitable Treatment

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

B. Supportive Measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent. (§ 106.30) They may be sought or provided before or after a Formal Complaint is filed, or where no Formal Complaint has been filed. Supportive Measures are designed to restore or preserve equal access to Vanderbilt's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the educational environment, or deter sexual harassment.

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

Vanderbilt will keep any Supportive Measures provided to a Complainant or Respondent private, to the extent possible. Supportive Measures that affect other members of the Vanderbilt community (e.g. mutual No-Contact Directives, where the other party must be informed of the order and its implications) may be disclosed to facilitate implementation. The Title IX Coordinator is responsible for coordinating the effective implementation of Supportive Measures.

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

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

E. Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process (collectively, Title IX administrators) will not have a conflict of interest or bias in favor of or against Complainants or Respondents generally or an individual Complainant or

Respondent. Vanderbilt will provide necessary and appropriate training to each Title IX administrator. Training materials will not rely on sex stereotypes and will promote impartial investigations and adjudications of Formal Complaints of sexual harassment. (§ 106.45(b)(1)(iii).)

IV. Formal Grievance Process

This portion of the Protocol outlines the steps taken to initiate a grievance, as well as USDOE's procedural requirements for investigation and adjudication of Formal Complaints.

A. Formal Complaint

- i. A Formal Complaint is a document filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment as defined by the Title IX Regulations against a Respondent and requesting that Vanderbilt investigate the allegation of sexual harassment. The submission of a Formal Complaint triggers the Formal Grievance Process when a Formal Complaint is received by the Title IX Coordinator.

A Formal Complaint must be in writing and may be filed with the Title IX Coordinator in person, by mail, or by email. The Formal Complaint must contain the Complainant's physical or digital signature, or some other indication that the Complainant is the person filing it. (§ 106.30.) At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in the education program or activity.

- ii. **If Vanderbilt receives an allegation of sexual misconduct that falls within the Formal Grievance Protocol's scope (it meets both the Title IX Regulations' definition of "sexual harassment" and their jurisdictional requirements (see [Section II](#))) but no Formal Complaint is filed, then the Title IX Regulations prevent Vanderbilt from administering a formal grievance process (including any informal or early resolution) that permits the imposition of any disciplinary sanctions or other actions against a Respondent. Supportive Measures, however, may still be given. (§ 106.44(a); § 106.45(b)(1)(i); see also § 106.8(c).) Accordingly, Vanderbilt strongly encourages Complainants to file a Formal Complaint, so that the required Formal Grievance Process can be followed.**
- iii. After filing a Formal Complaint, a Complainant may withdraw their Formal Complaint at any time by providing written notice to the Title IX Coordinator. That withdrawal concludes the Formal Grievance Protocol process unless the Title IX Coordinator takes action under [Subsection A.iv.](#) immediately below. (See also [Subsection D.v.](#) below regarding permissive dismissal.)
- iv. A Title IX Coordinator may sign a Formal Complaint to initiate or continue the Formal Grievance Process, if necessary to fulfill Vanderbilt's duties under Title IX to not be deliberately indifferent to

actual knowledge of sexual misconduct. Signing a Formal Complaint does not make a Title IX Coordinator a Complainant or otherwise a party. (§ 106.30.)

- v. Vanderbilt may, but is not required to, consolidate Formal Complaints arising out of the same factual circumstances in two scenarios:
 - 1. Where there is more than one Complainant or Respondent;
 - 2. Where a Formal Complaint has also been filed by the Respondent against the Complainant. (§ 106.45(b)(4).) In such cases, the Formal Grievance Process for a later-filed Formal Complaint may be consolidated into an earlier-filed process rather than re-start from the beginning (e.g., the new charges may be considered in the course of a pre-existing investigation).
 - 3. Vanderbilt may also, but is not required to, consolidate Formal Complaints and other complaints initiated under the Policy that arise out of the same factual circumstances so long as the consolidated complaint is resolved in accordance with the requirements of this Protocol.
- vi. Mandatory Dismissal (§ 106.45(b)(3)(i, iii).)
 - 1. If a Formal Complaint is filed, Vanderbilt will investigate its allegations.
 - 2. If the conduct alleged does not meet the Formal Grievance Protocol scope requirements in [Section II](#) for “sexual harassment” as defined by USDOE, Vanderbilt must dismiss the Formal Complaint under this Protocol. However, in such circumstance, the Title IX Coordinator will transfer the complaint into the Vanderbilt Sexual Misconduct Policy for review and possible investigation and resolution.
 - 3. In such circumstance, Vanderbilt will promptly and simultaneously send written notice to each party of the dismissal of the Formal Complaint, the reasoning, and the transfer for review under the Vanderbilt Sexual Misconduct Policy.

B. Title IX Coordinator Initial Responsibilities

- i. Upon receipt of any report of alleged sexual misconduct, the Title IX Coordinator will promptly contact the Complainant to discuss the availability of Supportive Measures and explain the process involved in filing a Formal Complaint. The Title IX Coordinator will inform the Complainant of the availability of Supportive Measures with or without the filing of a Formal Complaint and will consider the Complainant’s wishes with respect to Supportive Measures. (§ 106.44(a).)
- ii. Supportive Measures will be assessed and may be offered as needed to Complainants, Respondents, and other members of the Vanderbilt community who may have been affected by the alleged conduct. Supportive Measures are discussed in [Section III.B.](#)
- iii. The Title IX Coordinator may conduct a limited, threshold investigation:
 - 1. to determine if the alleged conduct meets the Formal Grievance Protocol scope requirements for “sexual harassment” as defined in § 106.30 (see [Section II](#));
 - 2. to determine whether Vanderbilt’s Title IX obligations require the Title IX Coordinator to “sign” a Formal Complaint if the Complainant does not file one; and

3. for other limited purposes;

provided that if a Formal Complaint is filed or signed, the Title IX Coordinator will fulfill the terms of this Formal Grievance Process, including the notice provisions immediately below and the more thorough investigation process described below even if it is somewhat duplicative of the threshold investigation.

- iv. Vanderbilt may remove a Respondent from the education program or activity on an emergency basis, provided that the Title IX Coordinator undertakes an individualized safety and risk analysis and determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal. The Respondent must receive notice and an opportunity to challenge the decision immediately following the removal. (§ 106.44(c).)
- v. Vanderbilt may place a non-student Respondent with a Vanderbilt employment relationship on administrative leave during the pendency of a Formal Grievance Protocol. (§ 106.44(d).)

C. Notice of Allegations (§ 106.45(b)(2))

- i. Upon receipt of a Formal Complaint, Vanderbilt will provide written notice to known parties of the following:
 - 1. Notice of Vanderbilt's Formal Grievance Process by providing access to this Protocol.
 - 2. Notice of the allegations potentially constituting sexual harassment, including sufficient details known at the time. Sufficient details are defined in the Title IX Regulations to include:
 - a. The identities of the parties involved in the incident, if known;
 - b. The conduct allegedly constituting sexual harassment; and
 - c. The date and location of the alleged incident, if known.
 - 3. Per the Title IX Regulations, the written notice must include the following statements:
 - a. The Respondent is presumed not responsible for the alleged conduct.
 - b. A determination regarding responsibility is made at the conclusion of the grievance process.
 - c. The parties may have an adviser of their choice, who may be, but is not required to be, an attorney.
 - d. The parties may inspect and review evidence.
 - e. The parties are prohibited from knowingly making false statements or knowingly submitting false information during the grievance process.
 - 4. The notice must be given as soon as practicable and with sufficient time to prepare a response before any initial investigation interview.
- ii. If, at any point during the course of the investigation, Vanderbilt decides to investigate allegations that are not included in the original notice, it will provide notice of the additional allegations to the parties.

D. Investigation Procedure

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

The Investigator will attempt to collect all relevant information and evidence. While the Investigator will have the burden of gathering evidence, it is crucial that the parties present evidence and identify witnesses to the Investigator so that they may be considered during the investigation. As described below in [Section IV.E.iii.3.](#), while all evidence presented at a hearing by the parties will be considered, the adjudicator(s) may, in its/their discretion, grant lesser weight to information or evidence introduced at the hearing that was available to the party but that was not previously presented for investigation by the Investigator.

The investigation file should contain all information gathered during the investigation that is potentially relevant to the alleged misconduct; the Investigator should not filter or exclude evidence or decide the weight or credibility of evidence, unless the evidence is clearly irrelevant.

Following the investigation, the Investigator will draft an investigation report succinctly describing all collected information. The Investigator will not make any recommendation as to whether a Protocol violation has occurred or potential sanctions.

ii. Evidentiary Considerations

1. While investigating the allegations of any Formal Complaint of sexual harassment, the Investigator will conduct an objective evaluation of all relevant evidence. Relevant evidence is any evidence that may tend to make the allegations at issue more or less likely to be true, *i.e.*, both “inculpatory” or corroborating evidence and “exculpatory” or contradicting evidence. (§ 106.45(b)(1)(ii).)

2. Standard of Evidence

- a. In assessing allegations of sexual harassment and conducting its Formal Grievance Process, Vanderbilt will use a preponderance of the evidence standard. (§ 106.45(b)(1)(vii).) This standard means that the alleged sexual misconduct is “more likely than not” to have occurred.
- b. That standard will apply to all Formal Complaints of sexual harassment, regardless of whether the Formal Complaint is against a student or other Vanderbilt community member, such as a faculty or staff member. (§ 106.45(b)(1)(vii).)

- iii. As dictated by the Title IX Regulations (§ 106.45(b)(5)), when investigating a Formal Complaint and throughout the grievance process, Vanderbilt will:
1. Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on Vanderbilt and not on the parties. (§ 106.45(b)(5)(i).) This means that Vanderbilt’s decision-makers will use the preponderance standard. See also [Subsection D.i.](#) above.
 2. Provide an equal opportunity for the parties to present witnesses and other relevant evidence. (§ 106.45(b)(5)(ii).)
 3. Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence. (§ 106.45(b)(5)(iii).)
 - a. Vanderbilt does not prohibit any party from discussing their own experience. While Vanderbilt cannot prevent a party or witness from discussing the allegations under investigation, Vanderbilt encourages parties to respect the sensitive nature of allegations of sexual misconduct. In addition, the Title IX Regulations and this Protocol prohibit retaliation against any person because they participate or refuse to participate in any part of Vanderbilt’s sexual misconduct processes. See [Section V.](#) below.
 - b. To the extent any person receives another person’s confidential information (such as medical or psychological treatment records) solely as a result of participation in any investigation or proceeding under this Protocol, such confidential information may not be re-disclosed outside of such forums. This provision does not apply to any information learned outside of an investigation or proceeding under this Protocol or the Policy.
 4. Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to bring an adviser of their choice to any related meeting or proceeding. The adviser may be, but is not required to be, an attorney. Vanderbilt will not limit the choice or presence of an adviser for either the Complainant or Respondent in any meeting or grievance proceeding; however, Vanderbilt will restrict the extent to which the adviser may participate in the proceedings, which will apply equally to both parties’ advisers. (§ 106.45(b)(5)(iv).)
 - a. Note: Advisers are not permitted to participate directly in any proceeding, with the exception of hearings and certain related meetings, as specified in [Section IV.E.iv.](#) below. Otherwise, advisers may be present solely to advise or support the party and are prohibited from speaking directly to the investigator, adjudicators, other parties, or witnesses in such proceedings.
 5. Provide written notice to each party of the date, time, location, participants, and purposes of each Formal Grievance Process meeting at which they are invited to participate, with sufficient time for the party to prepare to participate.
 - a. For all hearings, Vanderbilt will provide at least 10 days’ notice.
 - b. For all non-hearing investigative interviews or meetings to which Vanderbilt invites a party, Vanderbilt will provide at least 5 days’ notice to that party. (§ 106.45(b)(5)(v).)

6. Provide both parties an equal opportunity to inspect and review any evidence Vanderbilt obtained as part of the investigation, whether obtained from a party or other source, that is directly related to the allegations raised in a Formal Complaint. The provision of such evidence is intended to help each party meaningfully respond to the evidence prior to conclusion of the investigation. (§ 106.45(b)(5)(vi).)
 - a. Parties may elect to submit certain records of medical examinations, treatment, or mental health services. Vanderbilt will not access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, *unless* the party voluntarily consents in writing to their use in a Formal Grievance Process. (§ 106.45(b)(5)(i).)

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

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

v. Permissive Dismissal

1. At any time during the investigation or hearing, Vanderbilt may dismiss the Formal Complaint or any of its allegations if:
 - a. A Complainant notifies the Title IX Coordinator in writing that they would like to withdraw the Formal Complaint in whole or in part;
 - b. The Respondent is no longer enrolled or employed by Vanderbilt; or
 - c. Specific circumstances prevent Vanderbilt from gathering evidence sufficient to reach a determination as to the Formal Complaint in whole or in part.
(§ 106.45(b)(3)(ii).)
2. In all such circumstances, Supportive Measures may be continued.
3. Under the first circumstance ([Subsection v.1.a](#)), the Title IX Coordinator may choose in their discretion to sign the Formal Complaint to continue to the Formal Grievance Process. See also [Sections IV.A.iii-iv](#), above.
4. Under the second circumstance ([Subsection v.1.b](#)):
 - a. The Respondent's student or employment records may be marked to indicate their departure during a disciplinary process (which may resume if they return to Vanderbilt), but will not indicate that the Respondent was found or assumed responsible for any alleged misconduct pending at the time of departure.
 - b. The Respondent may be required to notify the Title IX Coordinator if they intend to visit any building owned or controlled by Vanderbilt or a student organization that is officially recognized by Vanderbilt, or if they otherwise seek to attend any Vanderbilt education program or activity or event, so that the Complainant may be given an opportunity to receive Supportive Measures if needed.
5. If permissive dismissal is granted under this section, the Formal Grievance Process will cease, no further investigation will occur, and no disciplinary sanctions or actions can be imposed against the Respondent. See [Section IV.A.ii](#). (citing § 106.44(a); § 106.45(b)(1)(i); § 106.8(c).)
6. A permissive dismissal under this section differs from a mandatory dismissal under [Section IV.A.vi](#) for alleged conduct that does not meet the Formal Grievance Protocol scope requirements contained in [Section II](#) for "sexual harassment" as defined by § 106.30.

E. Adjudication

i. Adjudication via hearing

1. Vanderbilt's Formal Grievance Process will culminate in a live hearing before an adjudicator, who will consider all evidence presented (subject to the terms below) and determine whether a Respondent is responsible for a violation of this Protocol. Applying the preponderance of the evidence standard, the burden of proof is met, and a Respondent may be found responsible for a Protocol violation, if the adjudicator determines that it is more likely than not that the Respondent committed the conduct alleged. Respondents are entitled to, and will receive the benefit of, a presumption that they are not responsible for the alleged conduct until the

grievance process concludes and a determination regarding responsibility is issued. If the Respondent is found responsible for a violation of this Protocol, the Respondent may be subjected to disciplinary action. (§ 106.45(b)(6)(i).)

2. The adjudicator will not be the same person as the Title IX Coordinator or the Investigator. Cases will be adjudicated by a trained third-party adjudicator.
3. At the request of either party, Vanderbilt will conduct the live hearing with the parties located in separate rooms. Technology must enable the adjudicator and parties to simultaneously see and hear the party or witness answering questions. Live hearings may, then, be conducted with all parties physically present in the same location, or any or all parties, witnesses and other participants may appear at the live hearing virtually.
4. Vanderbilt will create a transcript or recording (audio or audiovisual) of any adjudicative hearing. It will be available to the parties for inspection and review pursuant to FERPA.

ii. Pre-hearing

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

iii. Evidence

1. At the hearing, all relevant evidence will be objectively evaluated. Relevant evidence is any evidence that may tend to make the allegations at issue more or less likely to be true. *i.e.*, "inculpatory" or corroborating evidence and "exculpatory" or contradicting evidence. Credibility determinations will not be based on a person's status as a Complainant, Respondent, or witness. (§ 106.45(b)(1)(ii).)

2. Consistent with the Title IX Regulations, questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless:
 - a. "offered to prove that someone other than the Respondent committed the conduct alleged" or
 - b. "if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent."(§ 106.45(b)(6)(i).)
3. While all relevant evidence presented at a hearing by the parties will be considered, the adjudicator has discretion to grant lesser weight to last-minute information or evidence introduced at the hearing that was not previously presented for investigation by the Investigator. See also [Section IV.D.i.](#), above.

iv. Cross-examination

1. As stated above in [Section IV.D.iii.4.](#), each party may be accompanied to the hearing by the adviser of their choice, who may be, but is not required to be, an attorney. Advisers may be present solely to advise or support the party and are prohibited from speaking directly to the investigator, adjudicators, other parties, or witnesses during the hearing, except for conducting cross examination.
2. At the hearing, the adjudicator will typically ask questions first, before either adviser. Subsequently, each party's adviser is permitted to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Cross examination at the live hearing must be conducted directly, orally, and in real time by the party's adviser of choice, and never by a party personally. (§ 106.45(b)(6)(i).)
3. If a party does not have an adviser present at the live hearing, Vanderbilt will provide without fee or charge to that party, an adviser who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party. (§ 106.45(b)(6)(i).)
 - a. If a party does not have an adviser for the hearing, the party must notify the Title IX Coordinator no later than the party's pre-hearing disclosures. (See [Section IV.E.ii.2.](#), above.) Otherwise, the hearing may be delayed, and the appointed adviser may have less time to prepare for the hearing.
 - b. Vanderbilt will make available a pool of trained advisers from which the party may select an adviser.
4. Only relevant cross-examination and other questions may be asked of a party or witness. See [Section IV.E.iii.](#), above, regarding relevancy. Before a party or witness answers a cross-examination or other question, the adjudicator(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. (§ 106.45(b)(6)(i).)
5. If a party or witness does not submit to cross-examination at the live hearing, the adjudicator must not rely on any statement of that party or witness in reaching a determination regarding responsibility. The adjudicator cannot, however, draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions. (§ 106.45(b)(6)(i).)

v. Determination Regarding Responsibility

1. The adjudicator will issue a written determination, typically within 15 days following the hearing. Based on a preponderance of the evidence, the adjudicator will decide if the respondent is responsible for engaging in the conduct alleged, and if so, what disciplinary action may be appropriate.
2. The written determination will include:
 - a. Identification of the allegations potentially constituting sexual harassment under this Protocol;
 - b. A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather evidence, and hearings held;
 - c. Findings of fact supporting the determination;
 - d. Conclusions regarding the application of this Protocol to the facts;
 - e. A statement of, and rationale for, the result as to each allegation, including:
 - i. A determination regarding responsibility;
 - ii. Any disciplinary sanctions the adjudicator imposes on the respondent; and
 - iii. Whether remedies designed to restore or preserve equal access to Vanderbilt's education program or activity will be provided to the Complainant; and
 - f. Procedures and permissible bases for the parties to appeal the determination.
(§ 106.45(b)(7)(ii).)
3. The written determination will be provided to the parties simultaneously.
4. Supportive Measures also may be provided to the Complainant that are designed to restore or preserve equal access to Vanderbilt's education program or activity, even if they are not listed in the written determination. Remedies and Supportive Measures that do not impact the Respondent should not be disclosed in the written determination; rather, the determination should simply indicate that "remedies will be provided to the Complainant." The Title IX Coordinator is responsible for effective implementation of any remedies and Supportive Measures. (§ 106.45(b)(7)(iv).)

vi. Range of Sanctions and Remedies (§ 106.45(b)(1)(vi))

1. Sanctions can include, but are not limited to, the following:
 - a. Expulsion
 - b. Suspension
 - c. Disciplinary Probation
 - d. Deferred Disciplinary Probation
 - e. Educational Conference
 - f. Additional components of sanctions may include, but are not limited to: restrictions, which may include limiting or barring access to certain facilities or activities and removal or reassignment from University housing.
2. Remedies can include, but are not limited to, the following:

- a. Access to on-campus counseling services and assistance in setting up an initial appointment with those services;
- b. No-Contact Directives;
- c. Rescheduling of academic exams and assignments;
- d. Providing alternative course completion options;
- e. Changing class schedules, including the ability to transfer course sections or withdraw from a course;
- f. Changing work schedules, job assignments, or job locations for University employment;
- g. Changing on campus residence hall assignments;
- h. Providing an escort for transit between University classes and activities;
- i. Providing academic support services, such as tutoring;
- j. Leaves of absence.

vii. Finality

The determination regarding responsibility becomes final either:

- 1. if an appeal is filed, on the date that Vanderbilt provides the parties with the written determination of the result of the appeal, or
- 2. if an appeal is not filed, the date on which an appeal would no longer be considered timely. (§ 106.45(b)(7)(iii).)

F. Appeals

- i. Both parties may appeal from a determination regarding responsibility, or from a dismissal of a Formal Complaint in whole or in part, on the following bases:
 - 1. A procedural irregularity, meaning an alleged failure to follow the process outlined in this Protocol, that affected the outcome of the matter;
 - 2. New evidence that was not reasonably available to the appealing party at the time of the hearing or dismissal, that could affect the outcome of the matter;
 - 3. The Title IX Coordinator, Investigator, or adjudicator had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter. The notice of appeal must describe with specificity the basis upon which such conflict of interest or bias is alleged and how it allegedly affected the outcome;
 - 4. The determination cannot reasonably be supported by the evidence; and
 - 5. The severity of the sanction.
- ii. Appeals must be submitted in writing to the Title IX Coordinator within 10 days of the date that the written adjudication determination is provided to the parties. The written appeal must state the ground(s) for the appeal, include the name of the appealing party, and bear evidence that it was submitted by the appealing party. The appeal statement must contain a sufficient description supporting the grounds for appeal. If the grounds for appeal is to consider new evidence that could

affect the outcome of the matter that was not reasonably available to the appealing party before or during the time of the hearing or the dismissal, then the written appeal must include such information. The Title IX Coordinator retains discretion to verify and/or waive minor procedural variations in the timing and content of the appeal submission.

- iii. Upon receipt of an appeal, Vanderbilt will
 1. Notify the other party in writing when the appeal is filed and implement appeal procedures equally for both parties;
 2. Ensure that the decision-maker for the appeal is not the same person as the decision-maker that reached the original determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator;
 3. Ensure that the decision-maker for the appeal does not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent, and that the decision-maker for the appeal has received the appropriate and necessary training;
 4. Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome.
(§ 106.45(b)(8)(iii).)
- iv. Vanderbilt will provide a copy of the appeal to the non-appealing party. The non-appealing party may submit a written statement within 10 days that may seek to affirm the initial decision and/or respond to the appeal statement.
- v. The Title IX Coordinator has discretion to impose or withhold any applicable sanctions or supportive measures prior to the appeal deadline and prior to the resolution of any appeal.
- vi. The decision-maker for the appeal will issue a written decision describing the result of the appeal and the rationale for the result within a reasonably prompt time frame, typically within 10 days following receipt of all appeals materials. The appeal will determine whether the adjudicator made an error on the grounds alleged in the appeal statement. The appeal is typically determined based on the existing record, but the appeal decision-maker has discretion to convene a limited or full hearing if needed. The appeal decision will be given simultaneously to both parties. (§ 106.45(b)(8)(iii)(E-F).)
- vii. The Appellate Officer will take action on the appeal based on the relevant ground for appeal as set forth below:
 1. In cases where there has been a material procedural error sufficient to affect the determination posed, the Appellate Officer will remand the case to the Title IX Office with instructions, as appropriate.
 2. In cases where the Appellate Officer deems there is new evidence that was not reasonably available to the appealing party at the time of the hearing or dismissal, that could affect the

outcome of the matter, the Appellate Officer will remand the case to the Title IX Office with instructions, as appropriate.

3. In cases where the Appellate Officer deems the Title IX Coordinator or Investigator had a conflict of interest or bias for or against the Complainant or the Respondent generally or the individual Complainant or Respondent that affected the outcome of the matter, the Appellate Officer will refer the case to the Associate Vice Chancellor for Equal Access to assure the University provides a resolution process without conflict of interest or bias.
4. In cases where the Appellate Officer deems the determination cannot reasonably be supported by the evidence, the Appellate Officer will reverse the determination.

G. Informal Resolution

- ii. At any time prior to reaching a determination regarding responsibility, Vanderbilt may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication. Vanderbilt may not offer an informal resolution process unless a Formal Complaint is filed. Both parties must agree to participate in an informal resolution process, and if they do, the Formal Grievance Process stops. Either party may withdraw from the informal process and resume the Formal Grievance Process at any time before an informal resolution is reached. Vanderbilt will not require the parties to participate in an informal resolution process, and will not require them to waive their rights to a Formal Grievance Process. (§ 106.45(b)(9).)
- iii. Vanderbilt will not offer or facilitate an informal resolution process to resolve allegations that a faculty or staff member sexually harassed a student. (§ 106.45)(b)(9)(iii).)
- iv. Prior to facilitating an informal resolution process, Vanderbilt will:
 1. Provide written notice to the parties disclosing the following:
 - a. The allegations;
 - b. The requirements of the informal resolution process, including the circumstances under which it precludes the parties from resuming a Formal Complaint arising from the same allegations;
 - c. The fact that, at any time prior to agreeing to an informal resolution, any party may withdraw from the informal resolution process and resume the Formal Grievance Process; and
 - d. Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.
 2. Obtain the parties' voluntary, written consent to the informal resolution process.
(§ 106.45)(b)(9)(i-ii).)
- v. If the parties agree to an informal resolution, the Formal Complaint is deemed withdrawn and the Formal Grievance Protocol will be terminated. However, the informal resolution is be considered

binding, and its breach gives rise to a new Formal Grievance Protocol, which may restart the Formal Grievance Protocol.

V. Retaliation (§ 106.71.)

- A. No person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, its regulation, or this Formal Grievance Protocol, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or this Protocol, constitutes retaliation.
- B. Vanderbilt will “keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any [C]omplainant, any individual who has been reported to be the perpetrator of sex discrimination, any [R]espondent, and any witness, except as may be permitted” by Title IX, FERPA, or as otherwise required by law, or to carry out Vanderbilt’s Title IX Formal Grievance Protocol or other resolution procedures under the Policy.
- C. The exercise of rights protected under the First Amendment does not constitute retaliation. The First Amendment does not restrict the activities of private universities including Vanderbilt; however, the USDOE is subject to the First Amendment and may not administer the Title IX Regulations in a manner that violates the First Amendment.
- D. Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a sexual misconduct grievance proceeding does not constitute retaliation. A determination regarding responsibility alone, however, is not sufficient to conclude that any party made a materially false statement in bad faith.
- E. Complaints alleging retaliation may be filed with the Title IX Coordinator and will follow grievance procedures under the Vanderbilt Sexual Misconduct Policy.

In the event an individual alleges that the Title IX Coordinator retaliated against them, the individual may file a complaint with the Associate Vice Chancellor for Equal Access, who will follow the grievance procedures either under this Protocol or under the Vanderbilt Sexual Misconduct Policy. The Title IX Coordinator (nor staff under the Title IX Coordinator’s supervision) will not oversee the investigation or adjudication of a complaint alleging that the Title IX Coordinator engaged in retaliation. If the Associate Vice Chancellor for Equal Access is also the Title IX Coordinator, an individual alleging the Title IX Coordinator retaliated against them may file a complaint with the Vice Chancellor for Administration.