

Procedures for Reporting, Investigating, and Hearing Alleged Violations of Certain College Policies

Berea College is committed to investigating promptly and resolving all complaints of personal conduct violating the College's policies concerning: (i) harassment, (ii) sexual misconduct, (iii) prohibited discrimination, and (iv) the College's policy on consensual relationships between employees and students (any of the foregoing being referred to as a "Violation"). The College provides the following procedures for reporting and investigating allegations and hearing complaints involving students, faculty, or staff. The procedures contained in this document (the "Procedures") may also be used, at the discretion of the President of the College, in other matters involving alleged violations of College policy where no specific investigative or hearing procedures have been designated. Complaints (other than those alleging sexual misconduct) involving only students (as both complainants and respondents) fall under the jurisdiction of the Student Conduct and Judicial Codes. Claims of harassment, sexual misconduct, etc., directed toward third parties such as College contractors or vendors are not within the scope of these Procedures and will be addressed administratively or otherwise.

A person who believes that he or she has been the victim of a Violation or desires to report a Violation may choose to pursue and resolve the situation privately without invoking these Procedures. However, pursuing the matter informally or privately does not preclude subsequent use of these Procedures. Students or employees of the College seeking information or having questions related to these Procedures may contact the Title IX Coordinator.

Reporting

1. If a person (a) who believes that he or she has been the victim of a Violation, or (b) has firsthand knowledge of a Violation (such person being referred to as the "complainant"), chooses to pursue the allegation through the informal or formal hearing processes described below, he or she begins by making a complaint to the College's Title IX Coordinator. (A "complaint" is defined as a written communication from a complainant that leads to investigation and action.)
2. A complainant may wish to make a record of the behavior constituting the Violation, including the date and a description of exactly what happened, who said or did what, and any other observations. The names of any witnesses to the incident may also be recorded. Such a record is best made promptly to ensure its greater reliability.
3. The Title IX Coordinator will contact the person accused of a Violation (the "respondent"), provide him/her with a copy of the complaint, and ask that a written response to the complaint be submitted by a specified date. The Title IX Coordinator shall also discuss with the complainant any interim measures (such as housing and labor assignments, workplace accommodations, security escorts or class schedule changes) that are appropriate prior to a hearing on the complaint.
4. A person accused of a Violation (the "respondent") may elect to report the matter to the College's Title IX Coordinator or the respondent's supervisor and is encouraged also to keep a record of the incident upon which the allegation was based.

Investigation

1. The Title IX Coordinator will investigate any complaint of an alleged Violation and inform

the respondent as soon as this is appropriate during the investigative process.

2. If the Title IX Coordinator determines that the alleged Violation is not likely to have occurred, the complainant, the respondent, and any appropriate administrator or other staff member who has been involved in the investigation will be so informed, and the complaint will be dismissed. The complainant may, within five calendar days of such a dismissal, appeal to the President for review of the Title IX Coordinator's action. The decision of the President on any such appeal is final and binding.

3. If there is an initial determination that there is a reasonable basis to believe that the alleged Violation has occurred, the Title IX Coordinator will report the matter to the appropriate senior administrator (usually the vice president of the College division in which the respondent is employed) and will advise the complainant of his or her options in pursuing the complaint. The Title IX Coordinator will also inform the respondent of the complaint if this has not already occurred during the investigation.

Actions

A complaint not dismissed by the Title IX Coordinator can be handled informally or through a formal hearing process utilizing these Procedures.

Resolving Complaints Informally

1. The complainant, whether student, faculty, staff member, or administrator, may request to have the matter informally resolved by the senior administrator (usually the vice president of the division in which the respondent is employed) to whom the respondent reports. The respondent must also be informed of this choice of process. If the parties cannot agree on an informal process, the complaint will be acted upon in the formal process as provided in these Procedures.

2. Informal processes may vary, depending on the circumstances surrounding the complaint, but the senior administrator who is asked to examine the complaint must begin the process as soon as possible after s/he has received the complaint but in no case more than 15 calendar days after the incident is reported.

3. In resolving complaints informally, the senior administrator must consult with the Title IX Coordinator regarding appropriate action in order to provide fair and consistent responses to similar matters across campus. Mediation is not appropriate in cases involving allegations of Sexual Violence.

4. If the complaint is informally resolved to the satisfaction of the complainant, respondent, and senior administrator, the administrator shall simultaneously provide a statement of resolution in writing, including any terms of the agreement, to the complainant, respondent, and the Title IX Coordinator.

5. Either party may choose to end the informal process at any time and move directly to the formal hearing procedures. If a complaint being handled informally cannot be resolved, then a formal hearing may be requested (as described below).

Resolving Complaints through the Formal Hearing Process

1. In order to initiate a formal hearing, the complainant must state in writing the charge(s) that

the panel will hear. Such charge(s) shall contain a recitation of the specific facts and circumstances constituting the alleged Violation. The respondent shall be given a copy of the charging document describing the Violation.

2. Formal complaints will be heard by a panel chosen from the pool of elected members of the Campus Conduct Hearing Board. The panel shall consist of three persons selected by the President of the College according to policy governing the Campus Conduct Hearing Board. The President shall name the panel's chairperson. The hearing process should begin as soon as possible and the panel must ordinarily conclude its work no less than 15 calendar days after the complaint has been submitted to the panel. Once the panel is appointed and organized, the panel's chairperson or the appropriate administrator shall give the complainant and respondent at least two calendar days' notice of the time and place of the hearing.

3. To the extent reasonably possible, hearings shall be conducted in a manner that does not inflict additional emotional trauma on the complainant. Requests for special hearing accommodations shall be addressed to and decided by the College's Title IX Coordinator.

4. Except in extraordinary circumstances, the respondent is entitled to confront his or her accuser and any witnesses at the hearing. The right of confrontation may be waived by the absence or gross misconduct of the respondent. The complainant and the respondent may each have one personal advisor present at the hearing. Such advisor(s) must be a full-time member of the faculty, staff, or administration of the College. Persons not directly involved in the hearing are not allowed to attend. In cases involving allegations of Sexual Violence, each party may be allowed to have an attorney present at the hearing. Attorneys may offer advice to their clients but are not otherwise permitted to participate in the hearing. If any party has an attorney present, then the College may also have an attorney present.

5. Other than the complainant and respondent, those who may testify are normally limited to witnesses or persons with personal knowledge of the incident or those who investigated the incident. Character witnesses are not permitted either for the complainant or respondent. Any available documentary evidence (e.g., email, letters, written documents or other records) that the parties intend to introduce should be submitted to the panel Chair in advance of the hearing.

6. The standard of proof in a formal hearing is whether, based on all the evidence presented, a reasonable person would conclude that it is more likely than not that the alleged Violation did occur (preponderance of evidence standard).

7. The Title IX Coordinator, Director of People Services, or another member of the faculty, administration, or staff of the College appointed by the President, will serve in an advisory capacity to the hearing panel and may be present for the formal hearing, but such advisors may not participate in the deliberations, findings or recommendations of the hearing panel.

8. Both the complainant and the respondent shall be kept informed of the status of the formal process by the Title IX Coordinator.

9. If the hearing panel concludes that the alleged Violation has occurred, the Title IX Coordinator then shall provide whatever information there may be to the panel about other Violations involving the respondent of which the respondent has been previously informed and any disciplinary action taken. The Title IX Coordinator may be asked to provide a recommendation regarding disciplinary action that may be warranted in a given case.

10. Following the hearing, the panel must submit its conclusions within 15 calendar days in the form of a written report of its findings and its recommendation(s) to the President. The President shall provide a copy of this report to both the complainant and the respondent.

11. If the respondent is a member of the College Faculty and believes that the underlying facts of the alleged Violation and findings of the hearing panel for the complainant have been based upon speech or behavior in a classroom, laboratory, public lecture, or comparable environment that is protected by academic freedom, s/he may appeal the findings in writing to the Faculty Appeals Committee within 15 calendar days, showing cause for the claim of academic freedom. If the appeal is accepted, the Faculty Appeals Committee must hear the claim as soon as possible and submit its findings to the President and respondent within 15 calendar days after the conclusion of its hearing.

12. The President weighs the recommendations of the hearing panel (and when appropriate, the Faculty Appeals Committee) in arriving at a decision. As soon as possible, that decision is simultaneously conveyed in writing to the complainant, the respondent, the chairperson of the panel, and anyone else the President believes should be informed. The President may provide such information in the written statement, including details from the panel's reports, as he or she deems appropriate.

General Guidelines

1. In the reporting, investigating, and hearing of alleged Violations, every effort shall be made to ensure confidentiality and the privacy of the parties involved, but complete confidentiality cannot be guaranteed, particularly if formal charges are filed. Requests for confidentiality shall be addressed to and decided by the College's Title IX Coordinator. At all stages, investigations, administrative hearings, and formal hearings complaints are to be handled discreetly and expeditiously. Every effort will be made to contain hearsay and to minimize the potential for harmful effects on the individuals involved and the College community.

2. Both the complainant and the respondent shall be assured of fair treatment throughout the investigation, administrative hearing and formal hearing processes. Retaliation or intimidation by either party is prohibited by law and College policy; neither will be tolerated. Any such retaliation or intimidation is subject to disciplinary action up to and including termination or expulsion.

3. Fabricated charges of alleged Violations or false testimony are serious offenses. Persons found to have fabricated charges or testified falsely will be subject to disciplinary action up to and including termination or expulsion.

4. At least annually, the Title IX Coordinator shall inform the President of reports of alleged Violations and the results of any investigations or complaints.

5. All references in these Procedures to "calendar days" shall mean all days except those days officially designated as College-wide holidays each year by the College's Office for People Services.

Disciplinary and Remedial Measures

When a Violation has been determined to have occurred, disciplinary measures shall be appropriate to the severity of the incident. Discipline may include one or more of the following actions: warning, reprimand, required letter of apology, changed assignment, relocation of office,

required counseling, suspension, demotion, loss of salary, and other appropriate penalties, up to and including termination. For students, discipline may include probation, suspension, expulsion or other sanctions as provided under the Student Conduct Code. The College shall undertake reasonable measures to remedy the Violation and prevent recurrence.

Appeals of Findings and Final Decisions on Findings and Sanctions

1. Either the complainant or the respondent involved with the alleged Violation may appeal to the President the findings of the panels of either the Campus Conduct Hearing Board or the Faculty Appeals Committee. Appeals are limited to two circumstances: (1) the discovery of new evidence bearing on the complaint; and (2) indications that improper procedures were employed in the investigation or in the formal hearing. The appeal must be made in writing within five calendar days after the parties have received the original report of findings from the President.
2. The decision of the President on the findings and sanctions in any case is final and binding.
3. The decision of the President on any appeal is final and binding.

Options Beyond the College

Individuals may have legal recourse beyond these Procedures. In particular, a complainant may file a formal complaint with the Office of Civil Rights (OCR) under Title IX (for students), with the Equal Employment Opportunity Commission (EEOC) under Title VII (for employees), file a civil lawsuit or pursue a criminal complaint with law enforcement authorities.