# **Investigative Processes**

Facts and circumstances of each complaint dictates which investigative process applies

#### **Investigative Process – Title IX Complaint**

Sexual Misconduct Under Title IX Policy (ADM3384)

### Formal Complaint

- · Complainant files & signs a formal complaint (requesting an investigation) to the Title IX Coordinator to initiate the grievance process; or
- Title IX Coordinator files & signs a formal complaint (requesting an investigation) when there is a reluctant complainant, and the institution has a compelling reason to investigate further.
- Complaint meets federal definition and criteria for Title IX investigative process.

- Written notice of the formal complaint and investigation will be provided concurrently to both parties;
- Information about the grievance process, rights of both parties, supportive measures, preservation of evidence, & other reporting options (e.g. law enforcement) will be provided to both parties; and

#### Written Notice

• The respondent is presumed not responsible for the alleged conduct & a determination of responsibility will be made at the conclusion of the Grievance Process.

#### Evidence Gathering

- Both parties may respond in writing and through interviews to provide statements and accounts of alleged conduct. Both parties may have an advisor of choice present;
- Both parties may present information & evidence, provide names of fact or expert witnesses relevent to the investigation, and submit to the
  investigator questions they would like asked of witnesses or parties; and
- Investigators will interview relevent & available witnesses.

# Investigation

- Investigators will share a copy of all evidence obtained concurrently with both parties (and each party's advisor) to have an opportunity to inspect & respond prior to the completion of the investigation report; and
- The completed investigation report (e.g. fairly summarizes the relevant evidence) and access to all evidence obtained will be provided concurrently to both parties (and each party's advisor) prior to the hearing.

# Report

# Live Hearing

In order for statements or evidence of a party or witness to be considered by the hearing officer in making a determination, the person must participate in the live hearing, and submit to questions & cross-examination; and
The hearing officer can ask questions of parties & witnesses, and the party's advisor will conduct direct- & cross-examination (relevent questions only) of the other party & witnesses. If a party doesn't have an advisor, the University will provide one.

#### V Determination

- The hearing officer is responsible for rendering a written determination of responsibility & sanctions (if applicable) based only on statements & evidence of the parties & witnesses that participated in the hearing; and
- The hearing officer will provide a copy of the written determination concurrently to both parties.

#### Determination

- Either party may appeal (a) the hearing officer's determination of responsibility, or (b) the University's dismissal of a formal complaint (see below):
- Both parties will be notified concurrently in writing when an appeal has been filed, & the appeal procedures will apply equally for both parties. The non-appealing party will have an opportunity to submit a written response in support or opposition to the outcome; and
- The appellate officer will render an independent written determination concurrently to both parties. This determination is final

# Appeal

# **Formal Complaint Dismissals**

MD Anderson may dismiss the formal complaint at any time prior to a determination of responsibility due to requirements under Title IX, non-applicability to the policy, insufficient evidence to make a determination, or a complainant withdraws the formal complaint. Both parties will receive notice if a dismissal is rendered.

The complaint may be referred for investigation through the Sexual Misconduct Prevention Policy investigative/conflict resolution procedures.

# Emergency Removals & Employee Administrative Leave

A respondent may be removed from the University's education program or activity (e.g. interim suspension) on an emergency basis, due to an immediate threat of physical health or safety of a person arising from the allegations. An employee respondent may be placed on administrative leave, during the pendency of the grievance process.

### **Investigative Process – Title IX Complaint**

**Sexual Misconduct Prevention Policy (ADM0285)** 

# **Formal Complaint**

- Complaint is received that does not meet the federal definition or criteria for Title IX investigative Process
- The Investigator will interview/complete an intake with the complainant to include discussing options for resolution (formal or informal process.
- If informal resolution process is requested by the complainant, the Director, EEO & HR Regulations and Title IX Coordinator will review the request and if approved, the EEO & HR Regulations Office will assist the complainant in methods for informally resolving the concern. If the complainant's request for an informal resolution process is not approved, the investigator will move forward with the formal resolution process.

### Evidence Gathering/Written Notice

- The Investigator will interview the Complainant, Respondent and all other relevant witnessees.
- Prior to interviewing the Respondent, the EEO and HR Regulations Department will contact and provide written notification to the Respondent as outlined in the policy. The notification will include parties involved, incident date(s), incident location(s) and a description of the incident(s). At least three Business Days after the written notification is provided, the EEO and HR Regulations Department will request a meeting with the Respondent.
- The Investigator will also review and consider all relevant evidence and will consider any interim measures needed.
- If the informal resolution process was initially utilized the EEO & HR Regulations Department may consider information obtained during that process within the course of a formal investigation.

# Investigation Report

- Upon completion of the investigation, the investigator drafts a report to include findings of facts and a preliminary determination of whether the policy was
- The investigator will present the preliminary investigation report to the Director of the EEO and HR Regulations Department for review.
   The Director, EEO & HR Regulations will: (a) accept the preliminary determination, (b) reject the preliminary determination, (c) amend the preliminary determination, or (d) remand the process back to the investigation stage to address an investigation concern.

### **Determination and** Adjudication Process

- After approval of the report, if it is determined that a violation did not occur, the investigator will notify the appropriate administrator with authority over the Respondent (i.e., manager, Department Chairs, SHP Dean, Vice President of Clinical Education) of the no violation finding. The investigator will also provide the Complainant and the Respondent with the determination with any redactions required for compliance with the Family Education Rights and Privacy Act (FERPA) and Texas Education Code, Sec. 51.971.
- If it is determined that a violation of the policy occurred, the Director of the EEO and HR Regulations Department will forward the approved investigation findings to the appropriate administrator over the Respondent for action. Prior to implementing any corrective or remedial actions, the appropriate administrator will consult with the Director of the EEO and HR Regulations Department and provide the Complainant and the Respondent with the investigation findings with any redactions required for compliance with the Family Education Rights and Privacy Act (FERPA) and Texas Education Code, Sec. 51.071.

# Formal Complaint Dismissals

MD Anderson may administratively close the formal complaint at any time prior to a determination of responsibility due to nonapplicability to the policy, insufficient evidence to make a determination, or a withdraws the formal complainant complaint. Both parties will receive notice if a dismissal is rendered.

### **Informal Resolution Option**

An alternative to the formal conflict resolution process (outlined above), the complainant may request conflict an informal resolution (if available). All requests are subject to review and approval by the Title IX Coordinator.

# **Administrative Leave**

A complainant or respondent may be removed from MD Anderson's education program or activity and/or workplace due to an immediate threat of physical health or safety of a person arising from the allegations.