

# **CRANBROOK ACADEMY OF ART TITLE IX POLICY AND PROCEDURE (SEXUAL ASSAULT, SEXUAL HARASSMENT AND SEXUAL MISCONDUCT POLICY)**

*Effective August, 2020.*

## **I. PREAMBLE**

Under Title IX of the Education Amendments of 1972 (20 U.S.C. 1681) and its implementing regulations (34 C.F.R. 106) sexual harassment is a form of prohibited sex discrimination. Title IX provides:

*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 educational program or activity receiving Federal financial assistance.*

Cranbrook Educational Community's Academy of Art ("Academy") is committed to fostering a campus environment that is free from unlawful discrimination on the basis of sex, including sexual harassment and sexual assault. Cranbrook Educational Community also maintains sex discrimination policies that meet or exceed applicable legal standards under Title IX and other applicable laws,<sup>1</sup> including but not limited to the Code of Conduct in the Student Handbook.

This Title IX Policy and Procedure is intended to ensure a safe and non-discriminatory educational and work environment and describe the process by which Cranbrook meets its obligations under Title IX and its implementing regulations.

## **II. SCOPE, APPLICABILITY, AND JURISDICTION**

All students, faculty, and staff participating in Academy programs and activities in the United States, as well as applicants for employment or admission are subject to this Title IX Procedure.

The Title IX regulations define "sexual harassment" to include three types of misconduct on the basis of sex which jeopardize the equal access to education that Title IX is designed to protect. These types of misconduct include: (1) any instance of quid pro quo harassment by an Academy employee; (2) any conduct on the basis of sex that in the view of a reasonable person is so severe and pervasive and objectively offensive that it effectively denies a person equal access to an Academy education program or activity; and (3) any instance of sexual assault, dating violence, domestic violence, or stalking, as those terms are defined below (collectively "Title IX Prohibited Conduct").

To fall within the jurisdiction of Title IX, the alleged Title IX Prohibited Conduct must have taken place in an Academy Program or Activity, and against a person in the United States at the time the conduct occurred. An "Academy Program or Activity" includes locations, events, or circumstances over which the Academy exercises substantial control over both the Respondent (accused perpetrator) and the context in which the Title IX Prohibited Conduct occurs, including but limited to U.S.-based school-sponsored field trips and any building owned or controlled by a student organization that is officially recognized by the Academy. Study-abroad programs are not covered by the Title IX regulations.

Given the federal mandates of Title IX and its implementing regulations, the rights and obligations provided in this Title IX Procedure necessarily supersede any conflicting rights or obligations provided in other Cranbrook policies and procedures, including disciplinary procedures. Conduct that falls outside the jurisdictional or

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<sup>1</sup> Other applicable laws include the Violence Against Women Reauthorization Act of 2013 (20 U.S.C. 1092(f)) (VAWA), also known as the Campus Sexual Violence Elimination Act (Campus SaVE Act); the Clery Act, 20 U.S.C. 1092(f) and implementing regulations, and Title VII of the Civil Rights Act of 1964, as amended.

definitional scope of Title IX, however, may still violate other Cranbrook policies and procedures, including but not limited to the Code of Conduct in the Student Handbook and may be addressed through other Cranbrook processes and procedures.

### III. REPORTING TITLE IX PROHIBITED CONDUCT

#### A. What to Report

The types of sexual harassment covered by this Title IX Policy and Procedure (collectively “Title IX Prohibited Conduct”) includes conduct on the basis of sex that satisfies one or more of the definitions below. Note that sexual misconduct or other discrimination on the basis of sex that does not fall within these specific definitions may still violate the Code of Conduct in the Student Handbook, and/or other policies and should be reported as directed in those policies.

It is also a violation to commit or attempt to commit any of the acts defined below or to knowingly aid or facilitate another person to commit any act of the acts defined below.

#### 1. Title IX Sexual Harassment

Conduct, on the basis of sex, that satisfies one or more of the following:

- a. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to Academy Programs or Activities.
- b. An employee of the Academy conditioning the provision of an aid, benefit, or service of the Academy on an individual’s participation in unwelcome sexual conduct.

2. **Sexual Assault:** Any sexual act directed against a Complainant without the Affirmative Consent of the Complainant, including instances in which the Complainant is incapable of giving consent, including because of Incapacitation.

**Affirmative Consent** means affirmative, conscious, and voluntary agreement to engage in sexual activity. It is the responsibility of each person involved in the sexual activity to ensure that the person has the Affirmative Consent of the other or others to engage in the sexual activity. Lack of protest or resistance does not mean Affirmative Consent, nor does silence mean Affirmative Consent. Affirmative Consent must be ongoing throughout a sexual activity and can be revoked at any time. Affirmative Consent may be based on a condition(s), *e.g.*, the use of a condom, and that condition(s) must continue to be met throughout an activity, unless there is mutual agreement to forego or change the condition. When there is no Affirmative Consent present during sexual activity, the activity at issue necessarily occurred “against the person’s will.”

**Incapacitation** means a person lacks the ability to voluntarily agree (that is, to give Affirmative Consent) to sexual activity because the person is asleep, unconscious, under the influence of an anesthetizing or intoxicating substance such that the person does not have control over their body, is otherwise unaware that sexual activity is occurring, or is unable to appreciate the nature and quality of the act. Incapacitation is not necessarily the same as legal intoxication.

#### 3. Nonforcible Sexual Violations

- a. **Incest.** Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by Michigan law.

- b. Statutory Rape.** Nonforcible sexual intercourse with a person who is under the statutory age of consent of Michigan. The age of consent in Michigan is 16.

**4. Dating Violence**

Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant. The existence of such a relationship is determined based on the Complainant’s statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

For the purposes of this definition:

- a.** Dating Violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
- b.** Dating Violence does not include acts covered under the definition of Domestic Violence

**5. Domestic Violence**

An act that could be classified as a felony or misdemeanor crime of violence committed:

- a.** By a current or former spouse or intimate partner of the Complainant;
- b.** By a person with whom the Complainant shares a child in common;
- c.** By a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner;
- d.** By a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Michigan;
- e.** By any other person against an adult or youth Complainant who is protected from that person’s acts under the domestic or family violence laws of Michigan.

To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

**6. Stalking**

Engaging in course of conduct directed at a specific person that would cause a reasonable person to (a) Fear for the person’s safety or the safety of others; or (b) suffer substantial emotional distress.

For the purposes of this definition:

- a.** Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person’s property.
- b.** Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.

- c. Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

**B. Where to Report**

**1. Title IX Coordinator**

Any person may report Title IX Prohibited Conduct (whether or not the individual reporting is the person alleged to have experienced the conduct), in person, by mail, by telephone, or by email, using the contact information listed below. Such a report may be made at any time, including during non-business hours, by using the telephone number or email address, or by mail to the office address, listed for the Title IX Coordinator.

**Title IX Coordinator**

Beth Beadle  
Director of Human Resources  
Cranbrook Educational Community  
39221 Woodward Avenue  
Cranbrook House, 1<sup>st</sup> Floor  
Bloomfield Hills, MI 48303-0801  
248-645-3165  
bbeadle@cranbrook.edu

**2. Other Senior Administration Officials**

Notice of allegations of Title IX Prohibited Conduct to the Title IX Coordinator, or an official with authority to institute corrective measures on the Academy's triggers the Academy's response obligations under Title IX. Such Senior Administration Officials include:

Susan Ewing, Director  
Cranbrook Academy of Art  
39221 Woodward Avenue  
Bloomfield Hills, MI 48303-0801  
248-645-3301  
sewing@cranbrook.edu

Judy Dyki, Director of Academic Programs and Library  
Cranbrook Academy of Art  
39221 Woodward Avenue  
Bloomfield Hills, MI 48303-0801  
248-645-3364  
jdyki@cranbrook.edu

**3. Reports to Law Enforcement**

If the individual is in immediate danger, or believes there could be an ongoing threat to the individual or the community, please call 911 or campussecurity..

For conduct that could also constitute a crime under Michigan law, a Complainant is encouraged—but not required—to contact the police by dialing 911 or the local police agency in the jurisdiction in which the alleged incident occurred.

Cranbrook officials, including the Director of Safety and Security (248-645-3170; [security@cranbrook.edu](mailto:security@cranbrook.edu)) will assist you in contacting local law enforcement authorities, if you request assistance.

### C. **When to Report and Confidential Resources**

There is no specific time frame for individuals who have experienced conduct that may constitute Title IX Prohibited Conduct to make an Initial Report pursuant to this Title IX Policy and Procedure. Individuals are, however, encouraged to make a report soon after the incident in question to assist in ensuring a prompt investigation.

At any time (whether or not an individual decides to make a report of Title IX Prohibited Conduct to the Title IX Coordinator or other Senior Administration Official), an individual may contact Judy Dyki or Beth Beadle for a referral to obtain counseling services.

### D. **How to Report**

Complainants who experience any type of sexual harassment or violence are encouraged to seek help as identified above. Any person may report Title IX Prohibited Conduct, whether or not the individual reporting is the person alleged to have experienced the conduct. To make an Initial Report of Title IX Prohibited Conduct, the Title IX Office will ask for the following information, if known:

- Name of Complainant
- Complainant's role, if any, within the Academy (student, faculty, employee, other)
- Name of Respondent
- Respondent's role within the Academy (student, faculty, employee, other)
- Date(s) of the incident
- Location of the incident
- Time of the incident
- Nature of the conduct (provide specific details of the report)
- Date of previous report (if any)
- To whom any previous report was made (if any)

## IV. **PROCEDURE: INITIAL RESPONSE, FORMAL COMPLAINT, INVESTIGATION, INFORMAL RESOLUTION, HEARING, AND APPEAL**

### A. **Receipt of an Initial Report of Title IX Prohibited Conduct**

#### 1. **Offer of Supportive Measures**

Upon receipt of notice of an Initial Report of Title IX Prohibited Conduct (which may come from any individual), the Title IX Coordinator (or their designee) will promptly contact the Complainant and inform the Complainant:

- of the availability of Supportive Measures, including that the Supportive Measures are available with or without filing a Formal Complaint;
- of the availability of confidential counseling resources off campus;
- how to file a Formal Complaint;
- that, if the reported conduct could be a crime, the Complainant has the right but not the obligation to file a police report, and that if there is a police investigation, the Title IX Coordinator will coordinate with law enforcement; and
- of the importance of preserving evidence and identification and location of Witnesses.

If on the face of the Initial Report, the Title IX Coordinator determines that the conduct alleged does not fall within the scope of Title IX, the Title IX Coordinator may also inform the Complainant that the matter may be referred to another Academy process (such as the Code of Conduct process outlined in the Student Handbook). Even if the matter is referred, the Complainant will still receive an offer of Supportive Measures.

Supportive Measures will be based on an individualized review depending on each situation, and may include but will not be limited to: extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, changes in work or housing locations, leaves of absence and increased security. The Academy will maintain as private any Supportive Measures provided to the Complainant or Respondent, to the extent that the Academy's ability to provide Supportive Measures is not restricted.

The Title IX Coordinator is responsible for coordinating the Supportive Measures and will consider the Complainant's wishes with respect to Supportive Measures.

## **2. Privacy and Confidentiality**

Notice to the Title IX Coordinator or other Senior Administration Official of conduct that could constitute Title IX Prohibited Conduct triggers the Academy's obligations under this Title IX Procedure. If the Title IX Coordinator, or other Senior Administration Official becomes aware that Title IX Prohibited Conduct is alleged to have occurred, the Academy has an obligation to review the available information and determine whether to proceed to an Investigation.

The Academy will make reasonable and appropriate efforts to preserve an individual's privacy and to protect the confidentiality of information. However, because of laws relating to reporting and other state and federal laws, the Academy cannot guarantee confidentiality relating to incidents of Title IX Prohibited Conduct. However, the Academy takes requests for privacy and confidentiality seriously, to the extent it can do so while at the same time fulfilling its responsibility to provide a safe and nondiscriminatory environment for all students and the Cranbrook community. The Academy will make sure the Complainant is aware he/she/they are protected from Retaliation.

Should a Complainant make a request that the Academy not disclose the Complainant's identity to the Respondent, the Title IX Coordinator will inform the Complainant that the Academy's ability to respond to the allegations and investigate may therefore be limited if the request is granted. A Complainant who initially requests confidentiality is not prohibited from later requesting that the Academy conduct a full investigation.

Whether or not the Complainant requests confidentiality, the Academy will keep private the identity of all Complainants, Respondents, and Witnesses, except as necessary to carry out this Procedure or as may be required by any other applicable law.

**3. Emergency Removal/Administrative Leave**

**a. Individualized Safety and Risk Analysis.**

Based on an Initial Report or Formal Complaint of Title IX Prohibited Conduct, the Title IX Coordinator, in consultation with others as appropriate, may undertake an individualized safety and risk analysis to determine whether the allegations indicate the Respondent poses an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Title IX Prohibited Conduct. If the Academy determines removal is appropriate, the Respondent will be provided with notice and an opportunity to challenge the decision immediately following the removal.

**b. Administrative Leave of a Non-Student Respondent.**

The Academy may place a non-student Respondent on administrative leave after notice of a report of Title IX Prohibited Conduct and during the pendency of resolution of the matter.

**B. Filing a Formal Complaint**

After the Initial Report, the Title IX Procedure will not move forward until a Formal Complaint is filed. A Formal Complaint can be filed in one of two ways:

**1. Complainant submits Formal Complaint.** A Complainant may complete and sign a Formal Complaint alleging Title IX Prohibited Conduct against a Respondent and requesting that the Academy Investigate the allegation of Title IX Prohibited Conduct.

**a.** At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in one of the Academy's Programs or Activities.

**2. Title IX Coordinator submits Formal Complaint.** The Title IX Coordinator may complete and sign a Formal Complaint.

**a.** A Complainant may request that the Academy not proceed with an Investigation or further resolution under this Policy and Procedure. A Complainant's wishes with respect to whether the Academy investigates will be respected unless the Title IX Coordinator determines that signing a Formal Complaint over the wishes of the Complainant is not clearly unreasonable in light of the known circumstances.

**b.** The Title IX Coordinator will inform the Complainant that due to various federal and state laws and/or in order to protect the safety of the campus community some circumstances require the Academy to move forward with an Investigation, even if the Complainant requests otherwise. The Academy's decision is subject to a balancing test that requires the Academy to consider a range of factors, including but not limited to the seriousness of the alleged conduct, whether there have been other complaints against the Respondent and the Respondent's status (such as whether the Respondent is a member of the faculty or staff).

**C. Receipt of a Formal Complaint of Title IX Prohibited Conduct**

1. **Notice of Formal Complaint.** Upon receipt of a Formal Complaint, the Academy will provide a Notice of Formal Complaint to the Parties for whom the Academy knows their identity, including the following details:
  - a. A description of the Academy's Title IX Procedure, including any Informal Resolution process.
  - b. A description of the allegations including sufficient details known at the time.
  - c. A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of a Hearing.
  - d. A statement that the Parties may have an advisor of their choice, who may be, but is not required to be an attorney, and who may inspect and review evidence as described herein.

The Notice of Formal Complaint will be provided with sufficient time to respond and prepare for any investigative interviews.

Once a Notice of Formal Complaint is issued, a Respondent student's ability to receive a degree is placed on hold.

After receiving Notice of Formal Complaint, both the Complainant and the Respondent will be asked to identify any academic, employment, or other significant conflicts that would affect the timing of the Investigation and potential Hearing. The Title Coordinator will consider this input in finalizing any Hearing Schedule.

2. **Ongoing Notice Requirement.** If, in the course of an Investigation, the Academy decides to investigate allegations about the Complainant or Respondent that are not included in the initial Notice of Formal Complaint provided, the Academy will provide notice of the additional allegations to the Parties whose identities are known.

#### D. **Rights and Responsibilities of Parties and Witnesses**

During an Investigation and Hearing under this Title IX Procedure, the Parties and Witnesses have the following responsibilities and rights.

1. **Responsibilities of the Parties and Witnesses**
  - a. The responsibility to be truthful, to cooperate with the process, and to follow the directions of Academy staff and agents responsible for administering this process;
  - b. The responsibility not to retaliate against or intimidate any individual who has reported Title IX Prohibited Conduct or who has participated as a Party or Witness in the process; and
  - c. The responsibility to keep private documents, materials, and information received from the Academy during this process; and,



- d. The responsibility to destroy, when so directed by the Academy, evidentiary materials and/or writings submitted by the other Party as party of the process.

**2. Rights of all Parties and Witnesses**

- a. The right to be protected from retaliation and intimidation where one has reported Title IX Prohibited Conduct or participated as a Party or Witness in the process;
- b. The right to exercise First Amendment rights and not be subject to investigation for retaliation for the exercise of such rights;
- c. The right to receive information regarding consequences for knowingly making false statements or knowingly submitting false information during the Title IX Procedure under the Code of Conduct Policy;
- d. The right to take breaks during cross-examination at a Hearing, as needed and as permitted by the Hearing Officer.

**3. Rights of Student Parties and Student Witnesses**

- a. The right not to be disciplined for drug and alcohol violations (relating to voluntary ingestion) or similar offenses in connection with the reported incident that do not place the health or safety of any other person at risk.
- b. A Party or Witness may not distribute materials obtained through the process and may not engage in retaliatory or intimidating conduct aimed at any other participants in the process. The Academy will investigate allegations of a person engaging in any of these prohibited acts. The Academy recognizes, however, that it cannot otherwise prevent individuals from speaking openly about their experience and the Academy process.
- c. For student Complainants and Respondents, the right to an Advisor of the Party's choice or an Academy-provided Advisor at no cost to the Party;

**5. Rights of all Parties**

- a. The right to be treated equitably and receive the same equitable access to Supportive Measures;
- b. The right to have each phase of the Title IX Procedure completed within a reasonably prompt timeframe;
- c. The right to an Advisor as described above;
- d. The right to receive a Notice of Formal Complaint that provides sufficient detail about the allegations and the applicable Academy policies for the Respondent to be able to respond and for both Parties to understand the scope of the Investigation;
- e. The right to decline to give a statement about the allegations or attend a Hearing;

- f. The right to participate in the Investigation, including by identifying fact Witnesses and Expert Witnesses and identifying and/or providing inculpatory, exculpatory and other relevant information and evidence to the Investigator;
- g. The right to receive any Notice of Dismissal;
- h. The right to appeal any Notice of Dismissal;
- i. The right to review all evidence directly related to the allegations, in electronic format or hard copy, with at least 10 days for the Parties to inspect, review, and respond to the evidence.
- j. The right to receive an Investigative Report that fairly summarizes relevant evidence, in electronic format or hard copy, with at least 10 days for the Parties to respond;
- k. The right to have the matter heard at a live Hearing by a neutral Hearing Officer who will determine the matter using a Preponderance of the Evidence standard and who will not prejudge the outcome of a case;
- l. The right to an Advisor who will conduct oral cross-examination at the live Hearing on behalf of the Party;
- m. The right to jointly agree with the other Party to waive cross-examination through the Advisor and instead submit written cross-examination questions to the Hearing Officer to conduct the examination. Parties will not be pressured to make this election or be penalized in any way for electing to conduct cross-examination through their Advisor;
- n. The right to receive a Written Determination Regarding Responsibility (if any);
- o. The right to appeal the Written Determination Regarding Responsibility to a neutral Appeal Officer; and
- p. The right to receive a Notice of Outcome of Appeal.

**6. Rights of the Respondent**

- a. The right not to have any disciplinary Sanctions imposed before a finding of responsibility in accordance with this Title IX Procedure; and
- b. The right to be presumed not responsible for the alleged Title IX Prohibited Conduct until a determination regarding responsibility is made at the conclusion of the Hearing.

**E. Initial Assessment of Formal Complaint**

The Title IX Coordinator shall make an initial assessment as to whether a Formal Complaint submitted by a Complainant contains sufficient allegations to describe an act of Title IX Prohibited Conduct covered by this Title IX Policy and Procedure. If it does not, the Academy may inform the Complainant about other Academy policies and procedures that may be more applicable to the alleged conduct.

**1. Request for More Information Prior to Investigation or Resolution**

If an assessment of a Formal Complaint submitted by a Complainant reveals that there are insufficient allegations in the Formal Complaint to determine whether a Title IX Investigation can go forward and/or issue a Notice of Formal Complaint (for example, the identity of the Respondent is not provided), the Title IX Coordinator can request additional information from the Complainant, and inform the Complainant that a Notice of Formal Complaint cannot be issued and an Investigation cannot go forward until more information is provided.

#### **F. Informal Resolution Process**

At any time after a Formal Complaint is filed, the Title IX Coordinator may, in his/her discretion, choose to offer and facilitate an Informal Resolution process, so long as both Parties give voluntary, informed, written consent to attempt Informal Resolution. The Informal Resolution Process cannot be used where a Formal Complaint has not been filed or where the Formal Complaint involves a student as Complainant and a staff or faculty member as a Respondent. An election to participate in an Informal Resolution does not constitute a waiver of the right to a formal Investigation and adjudication of Formal Complaints of Title IX Prohibited Conduct. Any person who facilitates an Informal Resolution will be experienced and trained in dispute resolution and trained on this Title IX Procedure. At any time prior to agreeing to an Informal Resolution, any Party has the right to withdraw from the Informal Resolution process and resume the process with respect to the Formal Complaint.

#### **G. Investigation**

For any allegations in any Formal Complaint not subject to dismissal under this Title IX Policy and Procedure, the matter will proceed to an Investigation. The formal Investigation phase is the period during which the Investigator gathers information about the allegations. This period of time is the Parties' opportunity to provide input regarding the collection of evidence, but the burden of gathering evidence and the burden of proof is on the Academy. The Academy may, in its discretion, consolidate the Investigation of multiple Formal Complaints where the allegations arise out of the same facts.

##### **1. Support During the Investigation and Hearing Process: Advisor**

The Advisor who may be but is not required to be an attorney serves as an advisor to the Party. A Party may select their own Advisor or request that one be provided by the Academy, at no cost to the Party. The Advisor may assist a Party on written submissions provided they are verified by the Party. The Advisor does not speak or advocate on behalf of the Party in Academy proceedings, except as provided in the Hearing section, below. Any Advisor who violates these expectations may not be permitted to participate further in the process or as an Advisor.

Only one Advisor will be allowed to accompany a Party to meetings with Investigators (including meetings that occur using technology, such as Zoom).

As described below, if the matter proceeds to a Hearing, all oral cross-examination must be conducted by a Party's Advisor, not by the Parties themselves. If a Party arrives at a Hearing without an Advisor, the Academy will designate an Advisor of the Academy's choosing to conduct the oral cross-examination on behalf of the Party. At the request of either Party, the Hearing may be conducted via technology in real time, with the parties located in separate rooms. The parties may jointly agree in advance to waive oral cross-examination and instead submit written cross-examination to the Hearing Officer to conduct the examination. Even if the Parties so agree, the Parties are still required to have an Advisor present at the Hearing.

##### **2. Investigation Process**

- a. **Investigator.** The Title IX Coordinator will personally conduct or designate an individual to conduct the Investigation of a Formal Complaint.
- b. **Notice of Interviews, Meetings or Hearings.** The Academy will send the Parties advance written notice of any investigative interviews, meetings, or hearings at which the Party is expected to be present.
- c. **Method of Information Gathering.** The Investigator may gather information, including collecting documents and conducting interviews. In addition, a Complainant or Respondent may: (i) submit documentary information to the Investigator; (ii) submit a list of Witnesses to be interviewed by the Investigator; and/or (iii) request that the Investigator attempt to collect documents and other information that are not accessible to the requesting Party.
- d. **Medical Records.** For purposes of this Title IX Policy and Procedure, the Academy 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 unless the Academy obtains that Party's voluntary, written consent to do so.
- e. **Past Sexual History.** 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 that someone other than the Respondent committed the conduct alleged by the Complainant, or 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.
- f. **Disclosure of information.** After the Investigator has concluded the collection of evidence, the Investigator will send the Parties and their Advisors all evidence directly related to the allegations, in electronic format or hard copy, with at least ten (10) calendar days for the Parties to inspect, review, and respond to the evidence. This is the opportunity for the Parties to identify New Evidence or Rebuttal Evidence. New Evidence is evidence that was not available earlier in the process, could not have been available based on reasonable and diligent inquiry, and is relevant to the matter. Rebuttal Evidence is evidence presented to contradict other evidence in the file, which could not have been reasonably anticipated by a Party to be relevant information at the time of the Investigation. New Evidence and Rebuttal Evidence may be included or excluded from the file, but in no event is this section intended to permit a Party who has declined to give a statement about the incident during the Investigation to give such a statement for the first time after the Investigator has concluded the collection of all other evidence. This section is intended to be invoked in rare instances to allow for the inclusion of information that was not available during the Investigation or

that could not have been reasonably anticipated to be relevant to rebut an issue that came to light.

### **3. Investigative Report.**

After the Investigator has received and considered the Parties' responses to the evidence, the Investigator will complete an Investigative Report that fairly summarizes the relevant evidence. The Title IX Coordinator will make the Investigative Report available to the Parties and their Advisors in electronic format or hard copy, with at least ten (10) calendar days for the Parties to respond in writing to the Investigative Report. After the Title IX Coordinator has reviewed the Parties' responses to the Investigative Report, the Title IX Coordinator will make the determination whether to dismiss the Formal Complaint or proceed to a Hearing.

#### **H. Post-Investigation Options**

##### **1. Dismissal of Formal Complaint After Investigation**

- a. Mandatory Dismissal.** The Academy must dismiss the Formal Complaint if after the Investigation it is determined by the Title IX Coordinator that the conduct alleged in the Formal Complaint does not constitute Title IX Prohibited Conduct or did not occur against a person in the United States. Any conduct dismissed under this Title IX Procedure that could constitute a violation of any other Academy policy, including but not limited to the Code of Conduct in the Student Handbook, may be referred to another applicable Academy process.
- b. Discretionary Dismissal.** The Academy may dismiss the Formal Complaint if:
  - i. The Respondent is no longer enrolled or employed by the Academy;
  - ii. Specific circumstances prevent the Academy from gathering sufficient evidence to reach a determination; or
  - iii. The Complainant informs the Title IX Coordinator in writing that the Complainant desires to withdraw the Formal Complaint or allegations therein.
  - iv. A Complainant may notify the Title IX Coordinator at any time that the Complainant does not wish to proceed with the Investigation and/or Hearing process. If such a request is received, the Title IX Coordinator will inform the Complainant that the Academy's ability to respond to the allegation may be limited if the allegations are withdrawn.
  - v. The Title IX Coordinator will consider relevant factors in reaching a determination as to whether to terminate the Investigation and/or Hearing process. In the event that the Title IX Coordinator determines that the Investigation will continue, the Title IX Coordinator will notify the Complainant of that determination. The Title IX Coordinator will include in that notification a statement that the Complainant is not required to

participate in the Investigation and/or Hearing process but that the process will continue. In the event that the Title IX Coordinator determines that the Investigation will be terminated, both Parties will be notified.

- c. Referral.** In the event of dismissal after the Investigation (mandatory or discretionary), the Title IX Coordinator may refer some or all of the matter for consideration under another applicable Academy policy or procedure, if any, including, but not limited to the Code of Conduct in the Student Handbook.
- d. Notice of Dismissal after Investigation.** Upon dismissal, the Academy shall promptly send a Notice of Dismissal (mandatory or discretionary) and reason(s) for the dismissal simultaneously to the Parties. If the matter is being referred to another Academy procedure because it does not constitute Title IX Prohibited Conduct, but could violate other Academy policy, that information will be included in the notice as well.
- e. Right to Appeal Notice of Dismissal.** The Parties may appeal a Notice of Dismissal. Each Party may submit a written appeal which will be shared with the other Party. The Parties must submit the appeal by the date determined by the Title IX Office, generally ten (10) calendar days from the receipt of the Notice of Dismissal. The appeal will be submitted to a new decisionmaker and will be limited to the following grounds:
  - i. Were there any procedural irregularities that substantially affected the outcome of the matter to the detriment of the Complainant?
  - ii. Was there any substantive new evidence that was not available at the time of the decision that could not have been available based on reasonable and diligent inquiry that would substantially affect the outcome of the decision?
  - iii. Is the decision one that a reasonable person might have made?

Upon receipt of a Party's appeal, the Title IX Coordinator will share it with the other Party. Each Party may submit a response to the other Party's appeal.

Each Party must submit this response by the date determined by the Title IX Coordinator, generally seven (7) calendar days after the other Party's appeal has been shared. The appealing Party will have access to the other Party's response to the appeal, but no further responses will be permitted.

The Title IX Coordinator is permitted, but not required, to file a response to a Party's appeal to respond to concerns relating to procedural irregularities including the Investigation. The Title IX Coordinator may submit one response for each Party that files an appeal (that raises a procedural irregularity). The Parties will have access to the Title IX Coordinator response(s) to the appeal, but no further responses will be permitted.

The remedy is limited to directing the Title IX Coordinator to issue a Notice of Hearing and proceed to a Hearing.

2. **Informal Resolution.** As set forth above, the Title IX Coordinator may offer an Informal Resolution for eligible matters at any time after a Formal Complaint is filed, including after the Investigation has concluded.

3. **Notice of Hearing/Setting of Hearing.** For any Formal Complaints not subject to Dismissal or Informal Resolution after Investigation, the matter will proceed to a Hearing. The Title IX Coordinator will notify both the Complainant and the Respondent in writing that the matter has been charged and referred to a Hearing Officer (who will be a neutral decision-maker separate from the Title IX Coordinator and/or the Investigator) to decide the matter. The Title IX Coordinator will promptly set the Hearing based on the availability of the Parties and Witnesses.

I. **Pre-Hearing Process**

1. **Creation of Hearing File.**

The Title IX Coordinator (working with the Investigator, if a separate person) will create the initial Hearing File within seven (7) calendar days after the issuance of the Notice of Hearing. However, in more complex cases involving, for instance, multiple allegations and/or Witnesses, the creation of the Hearing File may take longer. Before the Hearing File is made available to the Parties, the Investigator/Title IX Coordinator will redact personally identifying information from the Hearing File, such as phone numbers, addresses, and medical information. The Investigator/Title IX Coordinator will also propose redactions of non-permissible and unrelated information in the Hearing File, and highlight those proposed redactions to the Parties. The Parties will receive electronic access to view the Hearing File. Parties will also receive a log describing gathered materials that were not included in the Hearing File.

a. **Expert Witnesses**

Expert Witnesses may be permitted only if:

- i. the Hearing Officer needs special expertise in order to understand a technical matter, such as relevant forensic evidence;
- ii. an understanding of that technical matter is likely to affect the Hearing Officer's finding; and/or
- iii. there is not a more efficient method of obtaining the information necessary to resolve that technical matter.

If allowed, an Expert Witness may be retained by a Party or by the Title IX Office. If an Expert Witness is retained by a Party, that Party will be responsible for any costs incurred, and the other Party will be allowed to respond to that Expert's written or oral testimony. If an Expert Witness is consulted by the Title IX Office and the expert's opinion or testimony is included in the Hearing File or offered to the Hearing Officer, the Parties will be allowed to respond to that Expert's written or oral testimony. A Party's Expert Witness must be identified in the Investigation phase, unless good cause is shown as to a late discovery of need for such testimony, and must be willing to submit to an interview with the Investigator, in part to determine whether the proposed testimony meets the standard set forth above.

2. **Evidentiary Review Process**

After reviewing the Hearing File, a Party is permitted to make a written request to have evidentiary concerns considered by the Hearing Officer, including any objections to proposed redactions in the Hearing File. Requests to review evidentiary concerns should include all evidentiary issues in one document. The

requests should be submitted to the Title IX Coordinator, who will forward all information from the Parties to the Hearing Officer.

In order to consider evidentiary concerns to the Hearing File, the Hearing Officer will have access to all materials gathered by the Investigator during the Investigation. The Parties must submit the written request by the date set in the Hearing Schedule, generally five (5) calendar days after the date the Hearing File is made available to the Parties. The Title IX Coordinator is permitted, but not required, to submit responses to the Parties' evidentiary objections to the Hearing Officer. The Hearing Officer has the authority to make all evidentiary decisions relating to what information is relevant; that is, what information should be admitted at the Hearing. If the Hearing Officer proposes to add New or Rebuttal Evidence to the Hearing File that not all Parties have reviewed, the Hearing Officer is permitted to grant Parties the opportunity to review and bring forward evidentiary issues, limited to the New or Rebuttal Evidence that was added.

During the Hearing, Parties, Advisors, and Witnesses must comply with the evidentiary decisions that have been made by the Hearing Officer.

Objections to the inclusion or exclusion of evidence cannot be the basis for appeal unless they were made through the Evidentiary Review process before the Hearing. The standard for review of evidentiary decisions on appeal will be whether the evidentiary decision was clearly erroneous and substantially affected the Hearing Officer's decision to the detriment of the appealing Party.

### **3. Response Statement to Hearing File**

Each Party may submit a written statement of their position to the Title IX Coordinator

- a.** This statement is each Party's opportunity to respond to the Hearing File and the charges made and to provide a statement to the Hearing Officer about what the Party believes the evidence shows.
- b.** No attachments will be accepted; references to evidence should be made to material in the Hearing File.
- c.** No New and/or Rebuttal Evidence may be submitted.
- d.** No information may be submitted that goes beyond the scope of the matter that is charged.

The Parties must submit this statement by the date set in the Hearing Schedule but generally five (5) calendar days from the date the Hearing File is made available to the Parties.

The Title IX Coordinator, in consultation with the Investigator, will remove information from a position statement that goes beyond the scope of the charge.

### **4. Hearing Schedule**

Within seven (7) days of when the Notice of Hearing is issued, the Title IX Coordinator will reach out to all Parties, Witnesses, and the Hearing Officer to schedule key dates for the matter (Hearing Schedule). The Hearing Schedule will take into consideration the academic and other conflicts identified in response to the Written Notice of Formal Complaint. Unless an extension is granted based on a showing of good cause, the Parties are obligated to follow the Hearing Schedule. The Hearing Schedule will be case-specific.

#### **J. Hearings**

##### **1. Format of Hearing.**



Hearings may be conducted with any or all Parties, Witnesses, and other participants appearing at the live Hearing virtually, with technology enabling participants simultaneously to see and hear each other, or with all Parties physically present in the same geographic location. The presumption will be that the Hearing will take place virtually, unless either Party requests otherwise or the Academy otherwise determines that an in-person Hearing is appropriate. If the Hearing takes place with all Parties physically present, the Academy will provide for the option for the Hearing to occur with the Parties located in separate rooms with technology enabling the Hearing Officer and Parties to simultaneously see and hear the Party or the Witness answering questions.

**2. Recording of the Hearing.**

Hearings will be recorded through audio or audiovisual means or transcribed, and the Academy will make the recording or transcript available to the Parties for inspection and review upon request.

**3. Role of Advisors.**

If a Party does not have an Advisor present at the Hearing, the Academy will provide without fee or charge to that Party, an Advisor of the Academy's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that Party.

**4. Role of the Hearing Officer.**

The Hearing Officer will be a non-Cranbrook professional neutral decision-maker (such as a retired judge) experienced and trained in adjudicating matters of civil rights, sexual harassment and/or sexual violence and trained on this Title IX Procedure. The Hearing Officer will be a person separate from the Title IX Coordinator and/or Investigator. The Hearing Officer will preside over the Hearing and will issue the Written Determination Regarding Responsibility.

The Hearing Officer will be identified to the Parties before the Hearing at least three days prior to the Hearing. The Hearing Officer will not be a Cranbrook employee or an alumnus/a of Cranbrook. Additionally, no person who has a conflict of interest may serve as the Hearing Officer. A conflict of interest exists if the Hearing Officer has prior involvement in or knowledge of the allegations at issue in the case, has a personal relationship with one of the Parties or Witnesses, or has some other source of bias.

Either Party may assert, in writing, that a Hearing Officer has a conflict of interest. A request to recuse a Hearing Officer based on a conflict must be submitted within 1 business day's receipt of the name of the Hearing Officer. The request is submitted to the Title IX Coordinator. A determination will be made whether a Hearing Officer has a conflict of interest, and if so that Hearing Officer will be replaced by an alternate.

At the Hearing, the Hearing Officer will:

- a. Permit Cross-examination.** At the Hearing, the Hearing Officer will permit each Party's Advisor to ask the other Party and any Witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination at the Hearing must be conducted directly, orally, and in real time by the Party's Advisor and never by a Party personally. The Parties may, however, jointly agree in advance to waive oral cross-examination and instead submit written cross-examination to the Hearing Officer to conduct the examination. Even if the Parties so agree, the Parties are still required to have an Advisor present at the Hearing. The Academy has discretion to otherwise restrict the extent to which an Advisor may participate in the proceedings. The Hearing Officer will permit Parties and witnesses to take breaks, as needed, during cross-examination. The Hearing Officer will also ensure the Advisors are conducting any live cross-examination in a

professional and courteous manner. The Hearing Officer will not permit Advisors to badger or harass Witnesses or Parties.

- b. Determine Relevance of Questions.** Only relevant cross-examination and other questions may be asked of a Party or Witness. Before a Complainant, Respondent, or Witness answers a cross-examination or other question, the Hearing Officer must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.
- c. Provide Rape Shield Protections for Complainants.** The Hearing Officer will prohibit any questions and evidence about the Complainant's sexual predisposition or prior sexual behavior as not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or 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.
- d. Exclude Statements, as Relevant, in Reaching a Determination Regarding Responsibility.** If a Party or Witness does not submit to cross-examination at the live Hearing, the Hearing Officer must not rely on any statement of that Party or Witness in reaching a determination regarding responsibility. The Hearing Officer cannot 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.

**5. Hearing Process.**

The Investigator will be available to answer any questions from the Hearing Officer about the Investigation.

The Hearing Officer may meet with the Parties and Witnesses for the purpose of making findings of fact. The Parties and Witnesses may not speak to matters beyond the scope of the Hearing File (for example, by raising potential misconduct allegations that go beyond the scope of the charged conduct). Parties and Witnesses must not disclose or reference information to the Hearing Officer that was excluded from the Hearing File. The Hearing Officer may ask questions of the Parties and/or Witnesses. Parties are permitted to listen to Witnesses as they are speaking to the Hearing Officer. The Hearing Officer is not obligated to speak to all Witnesses.

**6. Written Determination Regarding Responsibility.**

The Hearing Officer shall issue a Written Determination Regarding Responsibility, applying the Preponderance of the Evidence standard, which shall include:

- a.** Identification of the allegations potentially constituting Title IX Prohibited Conduct;
- 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 other evidence, and Hearings held;
- c.** Findings of fact;
- d.** Conclusions about whether the alleged Title IX Prohibited Conduct occurred, applying the definitions set forth in this Title IX Procedure to the facts;

- e. The rationale for the result as to each allegation;
- f. Any disciplinary Sanctions imposed on the Respondent;
- g. Whether Remedies or Supportive Measures will be provided to the Complainant; and
- h. Information about how to file an appeal.

The Hearing Officer's determination will be provided to the Title IX Coordinator who will be responsible for implementing the Supportive Measures and/or Remedies, including the continuation of any Supportive Measures and/or any additional or on-going accommodations for both Parties. The Title IX Coordinator will cause the Written Determination Regarding Responsibility to be sent to both Parties simultaneously. The Title IX Coordinator will maintain copies of the Written Determination Regarding Responsibility and Sanctions and/or Remedies (if any) for the purpose of maintaining records as set forth in Section M, below.

The Hearing Officer must explain decisions on responsibility and Sanctions (if applicable) and Remedies with enough specificity for the Parties to be able to file meaningful appeals.

The consideration of whether Remedies and Sanctions go into immediate effect or are held in abeyance pending appeal or some combination thereof, will be determined on a case-by-case basis by the Title IX Coordinator.

The Written Determination Regarding Responsibility becomes final:

- a. if an appeal is not filed, the date on which an appeal would no longer be considered timely; or
- b. if an appeal is filed, on the date that the Academy provides the Parties with the written determination of the result of the appeal.

**K. Appeal of a Written Determination Regarding Responsibility**

**a. Submission of Appeal**

Both Parties have the right to an appeal from a Written Determination Regarding Responsibility on the bases set forth below. Appeals may be submitted by a Complainant or Respondent in writing to the Title IX Coordinator, who will forward the appeal to a designated Appeal Officer to decide the appeal. The Appeal Officer will be a professional neutral decision-maker (such as a retired judge) experienced and trained in adjudicating matters of civil rights, sexual harassment and/or sexual violence and trained on this Title IX Procedure. The Appeal Officer will not be a Cranbrook employee or an alumnus/a of Cranbrook. Additionally, no person who has a conflict of interest may serve as the Appeal Officer. A conflict of interest exists if the Appeal Officer has prior involvement in or knowledge of the allegations at issue in the case, has a personal relationship with one of the Parties or Witnesses, or has some other source of bias.

Each Party may submit a written appeal, which will be shared with the other Party. The Parties must submit the appeal by the date determined by the Title IX Office, generally ten (10) calendar days from the receipt of the Written Determination Regarding Responsibility (if any).

The grounds for appeal are limited to the following:

- i. Were there any procedural irregularities that substantially affected the outcome of the matter to the detriment of the appealing Party?
- ii. Was there any substantive new evidence that was not available at the time of the decision or Hearing and that could not have been available based on reasonable and diligent inquiry that would substantially affect the outcome of the decision?
- iii. Did the Title IX Coordinator, Investigator(s), or Hearing Officer have a conflict of interest or bias for or against Complainants or Respondents that affected the outcome of the matter?
- iv. For matters that proceeded to Sanctioning and imposition of Remedies, are the Sanction and/or Remedies ones that could have been issued by reasonable persons given the findings of the case?

Upon receipt of a Party's appeal, the Title IX Coordinator will share it with the other Party. Each Party may submit a response to the other Party's appeal. Each Party must submit this response by the date determined by the Title IX Coordinator, generally ten (10) calendar days after the other Party's appeal has been shared. The appealing Party will have access to the other Party's response to the appeal, but no further responses will be permitted.

The Title IX Coordinator is permitted, but not required, to file a response to a Party's appeal to respond to concerns relating to procedural irregularities or bias in the Investigation and Hearing process. The Title IX Coordinator may submit one response for each Party that files an appeal (that raises a procedural irregularity). The Parties will have access to the Title IX Coordinator's response(s) to the appeal, but no further responses will be permitted.

In matters involving staff Respondents, the head of Human Resources is permitted, but not required, to file an appeal on the basis that the sanctions imposed by the Hearing Officer are not severe enough, even if the Complainant does not appeal on that basis. An appeal by the head of Human Resources must be submitted by the date determined by the Title IX Coordinator generally ten (10) calendar days from the receipt of the Written Determination Regarding Responsibility (if any). The Human Resources appeal will be shared with the Respondent, and the Respondent will be permitted to submit a response by the date determined by the Title IX Coordinator, generally ten (10) calendar days after the Human Resources appeal has been shared.

#### **b. Appeal Decision**

The Appeal Officer will provide the Notice of Outcome of Appeal no later than ten (10) calendar days after receipt of all appeal documents. The Title IX Coordinator will cause the Notice of Outcome of Appeal to be sent to the Parties simultaneously.

As needed, the Appeal Officer will consult with the Title IX Coordinator regarding the management of ongoing Remedies. The Appeal Officer may reject the appeal in whole or in part, issue a new decision regarding responsibility, issue new or revised Sanctions and Remedies, or refer the matter to a new Hearing Officer.

#### **L. RETALIATION PROHIBITED**

Retaliation against a student, employee, or other individual who exercises any right under Title IX, including any student, employee or other individual who reports or complains about sex discrimination

to an appropriate school official or participates in a report, investigation, hearing, or other proceeding involving a claim or allegation under this policy is prohibited.

**M. RECORD KEEPING**

The Academy will keep records for 7 years of:

- Sexual harassment investigations, including any determination regarding responsibility and any audio or audiovisual recording or transcript, any disciplinary sanctions imposed on the Respondent, and any remedies provided to the Complainant designed to restore or preserve equal access to the Academy's programs or activities;
- Any appeal and the result of the appeal;
- Any informal resolution;
- Records of any actions taken in response to a report or formal complaint of sexual harassment (including any supportive measures considered and/or offered), information establishing that the Academy's response was not deliberately indifferent and that it has taken measures designed to restore or preserve equal access to the Academy's programs or activities; and
- All materials used to train Title IX coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process.