

**Sexual Misconduct &
Sex-Based Discrimination
Policy and Grievance
Procedures
ADDENDUM**

Rationale

April 6, 2021 the Department of Education's Office for Civil Rights [announced its intent](#) to undertake "a comprehensive review of the Department's existing regulations, order, guidance, policies, and any other similar agency actions, including the amendments to the Department's Title IX regulations that took effect on August 14, 2020." That announcement included information about the Department's plan to publish a notice of proposed rulemaking (NPRM) to amend the Title IX regulations. The Department concluded its public comment period and posted a ["Summary of Major Provisions of the Department of Education's Title IX Notice and Proposed Rulemaking."](#) The Department anticipates a date of October 2023 for the final Title IX rule.

In July 2021, a federal district court in Massachusetts issued a decision in *Victim Rights Law Center et al. v. Cardona*. The court found the live hearing requirement for the Title IX grievance process at postsecondary institutions "to be arbitrary and capricious, vacated that part of the provision, and remanded it to the [Department of Education] for further consideration." Specifically, the court vacated the part of the regulations "that prohibits a decision-maker from relying on statements that are not subject to cross-examination during the hearing: 'If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility...'" As a result of the Massachusetts court order, the Department is no longer enforcing that part of the regulation. In its [August 24, 2021 letter](#), the Department states "In practical terms, a decision-maker at a postsecondary institution may now consider statements made by parties or witnesses that are otherwise permitted under the regulations, even if those parties or witnesses do not participate in cross-examination at the live hearing, in reaching a determination regarding responsibility in a Title IX grievance process."

Change

Therefore, Colby-Sawyer College's Sexual Misconduct & Sex-based Discrimination Policy and Grievance Procedures is amended to reflect this change. Colby-Sawyer's "Expectation Regarding the Complainant, the Respondent, and the Witness Regarding the Hearing" (page 25) are amended as follows:

ii. [Expectation Regarding the Complainant, the Respondent, and the Witnesses Regarding the Hearing](#)

In all proceedings under this policy, including at any meeting leading up to and at the hearing, the complainant, the respondent, and the witnesses and other individuals sharing information are expected to provide truthful information.

If the complainant, the respondent, or a witness informs the college that they will not attend the hearing (or will refuse to be cross-examined), the hearing may proceed, as determined by the college Title IX coordinator. The hearing board may not, however: ~~(a) rely on any statement or information provided by that non-participating individual in reaching a determination regarding responsibility; or (b) draw any adverse inference in reaching a determination regarding responsibility based solely on the individual's absence from the hearing (or their refusal to be cross-examined).~~

Hearings may be conducted in person or by video conference or any other means of communications by which all individuals participating are able to see and hear each other. Each party may make requests related to the format or the nature of their participation in the hearing.

All requests made must be made no less than (3) business days prior to the hearing. Such request will need to be submitted to the hearing board officer who will then disseminate the information to the hearing board for consideration and decisions.

If you have any questions about this modification, or any parts of the Sexual Misconduct and Sex-Based Discrimination Policy and Grievance Procedures, please contact Robin Burroughs Davis, Vice President for Student Development and Dean of Students and Title IX Coordinator at rdavis@colby-sayer.edu.