

SOUTHWESTERN COMMUNITY COLLEGE	STUDENT SERVICES SEX DISCRIMINATION TITLE IX SEXUAL-AND HARRASMENT PROCEDURE – TITLE IX	<u>Procedure</u> 6.03.03.01
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Southwestern Community College (“The College”) strives to make its campuses inclusive and a safe and welcoming learning environment for all members of the College community. Pursuant to multiple federal and state laws and administrative regulations and pursuant to College policy, the College prohibits discrimination in its education programs and activities based on sex.

Title IX is a comprehensive federal law that prohibits discrimination on the basis of sex in any federally funded education program or activity. Under Title IX, discrimination on the basis of sex includes *quid pro quo* harassment; sexual harassment; and sexual assault, stalking, dating or domestic violence (collectively referred to as "sexual harassment"). The College’s Title IX Coordinator has oversight responsibility for handling sexual harassment complaints and for identifying and addressing any patterns and/or systemic problems involving sexual discrimination or harassment.

All allegations involving sexual harassment should be directed to the College’s Title IX Coordinator and addressed under these procedures. For other complaints of discrimination and harassment not related to sexual harassment, refer to Discrimination and Harassment Procedure 6.03.03.02.

I. DEFINITIONS

The following definitions shall apply to this procedure. The definitions are not intended to operate as speech codes, promote content and viewpoint discrimination or suppress minority viewpoints in the academic setting. Indeed, just because a person’s speech or expression is deemed offensive by others does not mean it constitutes discrimination or harassment.

- A. Complainant** – an individual who is alleged to have been subjected to conduct that could constitute Sexual Harassment, as defined in these Procedures, and who was participating or attempting to participate in the College’s education program or activity at the time of the alleged Sexual Harassment.
- B. Confidential Employees** – 1) employees with confidentiality bestowed by law or professional ethics, such as lawyers, medical professionals, clergy, and mental health counselors; 2) employees whom the College has specifically designated as Confidential Employees for purposes of providing support and resources to a Complainant; and 3) employees conducting human subjects research as part of a study approved by the College’s Institutional Review Board. The College has designated the following as Confidential Employees: Student Counselor.
- C. Consent** – knowing, voluntary, and clean permission by word or action to engage in sexual activity. Consent is evaluated from the perspective of what a reasonable person would conclude are mutually understandable words or actions. Reasonable reciprocation can establish consent. Consent to some

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sexual contact (such as kissing or fondling) cannot be assumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent.

Consent has not been obtained in situations where the individual: i) is forced, coerced, pressured, manipulated or has reasonable fear that they will be injured if they do not submit to the act; ii) is incapable of giving consent or is prevented from resisting due to physical or mental incapacity (including being under the influence of drugs or alcohol); or iii) has a mental or physical disability which inhibits his/her ability to give consent to sexual activity.

- D. Dating Violence** – violence on the basis of sex committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant. For purposes of this definition, Dating Violence includes but is not limited to sexual or physical abuse or the threat of such abuse.
- E. Domestic Violence** – violence on the basis of sex committed by a current or former spouse or intimate partner of the Complainant; by a person with whom the Complainant shares a child in common; by a person with whom the Complainant cohabitates or has cohabitated as a spouse or intimate partner; by a person similarly situated to a spouse of the Complainant under the domestic violence laws of the State; or by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic violence laws of the State.
- F. Education Program or Activity** – for purposes of these Procedures, this means any locations, events, or circumstances in which the College exercises substantial control over both the Respondent(s) and the context in which the alleged sexual harassment occurs.
- G. Formal Complaint** – a verbal or written report alleging sexual harassment against a Respondent that objectively can be understood as a request for the College to investigate the allegation(s) and make a policy violation determination. A Formal Complaint initiates a formal grievance process in which parties are entitled to due process protections. A Formal Complaint is separate and distinct from a Report, which provides only notice to the College of an allegation or concern about sexual harassment and provides an opportunity for the Title IX Coordinator to provide information, resources, and supportive measures.
- H. Informal Resolution** – a resolution reached regarding an allegation of sexual harassment without going through the entire formal grievance process. Informal Resolution may include mediation, facilitated dialogue, conflict coaching, restorative justice, or other models of alternative dispute resolution. Informal

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Resolution cannot be used for a student's allegation of sexual harassment against a College employee.

I. Report – notice to the College of an allegation or concern about sexual harassment that provides an opportunity for the Title IX Coordinator to provide information, resources, and supportive measures. When the College receives a Report of alleged sexual harassment, the College is deemed to have knowledge of conduct that reasonably may constitute sexual harassment.

J. Respondent – an individual who has been reported to engage in conduct that could constitute Sexual Harassment.

K. Retaliation – to intimidate, threaten, coerce, or discriminate against any person by the College, a student, employee, or a person authorized by the College to provide aid, benefit, or service under the College's education program or activity, for the purpose of interfering with any right or privilege secured by law or policy, or because the person has made a report or complaint, testified, assisted, participated, or refused to participate in any manner in an investigation, proceeding, or hearing under these Procedures.

The exercise of rights protected by the First Amendment does not constitute retaliation. It is also not retaliation for the College to pursue Policy violations against those who make materially false statements in bad faith in the course of a resolution under these Procedures.

L. Sexual Assault – an offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI's Uniform Crime Reporting system.

M. Sexual Harassment – a form of sex discrimination that means harassment on the basis of sex. Sexual Harassment includes hostile environment harassment; *quid pro quo* harassment; or any instance of sexual assault, dating violence, domestic violence, or stalking.

Hostile environment harassment is unwelcome sex-based conduct, which based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the College's education program or activity.

Hostile environment harassment is a fact-specific inquiry that includes consideration of the degree to which the conduct affected the Complainant's ability to access the College's education program or activity; the type, frequency, and duration of the conduct; the parties' ages, roles, previous interactions, and other factors that may be relevant; the location of the conduct and the context in which the conduct

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occurred; and any other sexual harassment in the College's education program or activity.

Quid pro quo harassment is when a College employee or agent who provides an aid, benefit, or service under the College's education program or activity and explicitly or impliedly conditions the provision of such aid, benefit, or service on a person's participation in unwelcome sexual conduct.

N. Stalking – engaging in a course of conduct on the basis of sex, directed at the Complainant, which would cause a reasonable person to fear for his/her safety or the safety of others or suffer substantial emotional distress.

For purposes of this definition, "course of conduct" means two or more acts, including but not limited to acts in which the Respondent 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.

O. Standard of Evidence – the College uses a "preponderance of the evidence" as the standard for proof of whether a violation of this policy has occurred. In the student due process hearing and employee grievance process, legal terms like "guilt", "innocence" and "burden of proof" are not applicable. Student and employee due process hearings are conducted to take into account the totality of all evidence available from all relevant sources. The College will find the Respondent either "responsible" or "not responsible" for violating these Procedures.

P. Supportive Measures – individualized services reasonably available that are non-punitive, non-disciplinary, and not unreasonably burdensome to the other party that are offered to restore or preserve educational access, protect safety, or deter sexual harassment. Examples of support measures are referral to counseling, medical, or other healthcare services; extensions of deadlines or other course-related adjustments; modifications of work or class schedules; campus escort services; mutual restrictions on contact between the parties; leaves of absences; increased security and monitoring of certain areas of the College; and other similar measures.

Q. Title IX Coordinator – for purposes of these Procedures, the Title IX Coordinator for student respondents refers to Dr. Mark Ellison, Dean of Students. The Title IX Coordinator's office is in the Balsam Center. The phone number is 828-339-4229 and the email address is m_ellison@southwesterncc.edu.

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The Title IX Coordinator for employee respondents is Bryan Singleton, Director of Human Resources, and located in the Balsam Center. The phone number is 828-339-4280 and the email address is b_singleton@southwesterncc.edu.

II. SCOPE AND APPLICABILITY

A. These Procedures apply to the conduct of and protect:

1. College students and applicants for admission into the College;
2. College employees and applicants for employment;
3. College student organizations; and
4. Third parties participating or attempting to participate in a College education program or activity.

B. These Procedures apply to conduct that occurs in any College Education Program or Activity or under circumstances where the College has disciplinary authority and of which the College has knowledge.

C. When a party is participating in a dual enrollment program, the College will coordinate with the party's school district to determine jurisdiction and coordinate providing supportive measures based on the allegations and identities of the parties.

III. REPORTING

A. Reporting to Local Law Enforcement

Individuals may report sexual harassment directly to local law enforcement agencies by dialing 911. Individuals who make a criminal allegation may also choose to pursue the College's grievance procedure simultaneously. A criminal investigation into the matter does not release the College from its obligation to conduct its own investigation (nor is a criminal investigation determinative of whether sexual harassment has occurred). However, the College's investigation may be delayed temporarily while the criminal investigators are gathering evidence. In the event of such a delay, the College must make available supportive measures when necessary to protect the parties and/or the College community.

Individuals may choose not to report alleged sexual harassment to law enforcement authorities. The College respects and supports individuals' decisions regarding reporting; nevertheless, the College may notify appropriate

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law enforcement authorities if legally required or warranted by the nature of the allegations.

B. Reporting to College Officials

The College's Title IX Coordinator oversees compliance with these Procedures and Title IX regulations. Questions about these Procedures should be directed to the Title IX Coordinator. Anyone wishing to make a report relating to sexual harassment may do so by reporting the concern to the College's Title IX Coordinator in person, by mail, by telephone, by email, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report of alleged sexual harassment.

C. Employees' Mandatory Reporting

All College employees, including student-employees, other than those deemed Confidential Employees, are Mandated Reporters and are expected to promptly report all known details of actual or suspected sexual harassment to appropriate officials immediately. Failure of a Mandated Reporter to report an incident of sexual harassment of which they become aware is a violation of College Policy and may subject the employee to disciplinary action.

D. Confidential Employees' Reporting

Confidential Employees designated by the College are not required to report actual or suspected sexual harassment. Confidential Employees must, however, provide a Complainant with the Title IX Coordinator's contact information and offer options and resources without any obligation to inform an outside agency unless otherwise required by law.

E. External Contact Information

Concerns about the College's application of these Procedures and compliance with certain federal civil rights laws may be addressed to:

Office for Civil Rights (OCR)
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-1100
Email: OCR@ed.gov
Phone: (202) 453-6012

Equal Employment Opportunity Commission (EEOC)
131 M Street, NE
Washington, D.C. 20507

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Email: info@eeoc.gov
Phone: 1-800-669-4000

IV. GRIEVANCE PROCEDURES

A. Scope

1. Use of these grievance procedures applies to reports alleging sexual harassment carried out by employees, students, or third parties.
2. All reports of sexual harassment are taken seriously. At the same time, those accused of sexual harassment are presumed "not responsible" throughout this grievance procedure.

B. Initial College Response and Assessment

1. After receiving a report of sexual harassment, the Title IX Coordinator takes prompt and appropriate steps to:
 - a. Communicate with the individual who reported the alleged conduct;
 - b. Offer and implement supportive measures to eliminate and prevent the recurrence of sex harassment, deter retaliation, remedy the effects of sex harassment, and provide due process rights during a College investigation;
 - c. Provide the individual with a copy of this Policy and Procedure; and
 - d. Determine whether the alleged conduct, as described by the reporting party, falls within the scope of this policy and if so, initiate the investigation and resolution procedures outlined below.
 - e. The Title IX Coordinator may delegate the authority to take some or all of these steps to a Deputy Title IX Coordinator.
2. Supportive Measures
 - a. Any Party may seek modification or reversal of the College's decision to provide, deny, modify, or terminate supportive measures applicable to the Party. A request to do so should be made in writing to the Title IX Coordinator.
 - b. The Executive Vice President for Instruction & Student services will determine whether to provide, deny, modify, or terminate the

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supportive measures if they are inconsistent with the definition of supportive measures as defined in this Procedure.

c. The College will also provide the Parties with the opportunity to seek additional modification or termination of supportive measures applicable to them if circumstances materially change.

3. There is no time limitation on providing a Formal Complaint to the Title IX Coordinator. However, if the Respondent is no longer subject to the College's jurisdiction and/or significant time has passed, the ability to investigate, respond, and/or provide remedies may be more limited or impossible.

4. False Allegations and Evidence

a. Deliberately false and/or malicious accusations under this Policy or Procedure are a serious offense and will be subject to appropriate disciplinary action. This does not include allegations that are made in good faith but are ultimately shown to be erroneous or do not result in a determination of a Policy violation.

b. Witnesses and Parties who knowingly provide false evidence, tamper with or destroy evidence, or deliberately mislead an official conducting an investigation or resolution process can be subject to discipline under appropriate College policies, procedures, and rules.

5. Emergency Removals/Administrative Leave

a. The College may remove a student Respondent, upon receipt of a report, Formal Complaint, or at any time during the grievance process, on an emergency basis when the College performs an individualized safety and risk analysis and determines that an imminent and serious threat to the health or safety of any student or other individual justifies removal.

i. The risk analysis is performed by the Student Assessment Team must recommend to the appropriate College official to implement or stay an emergency removal of a student and the conditions and duration of such emergency removal.

ii. In all cases in which an emergency removal is imposed, the student shall be given notice and an opportunity to challenge the removal decision immediately following the removal by submitting a written appeal to the President.

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iii. Violation of an emergency removal under this Procedure is grounds for independent disciplinary action, up to and including suspension or expulsion.

b. The College may place an employee on suspension with pay upon receipt of a report, Formal Complaint, or at any time during the grievance process. An employee does not have a right to appeal a determination to place the employee on suspension with pay pending the conclusion of the Title IX grievance procedure. Violation of the terms of the suspension is grounds for independent disciplinary action, up to and including dismissal.

6. The Title IX Coordinator may administratively close a Formal Complaint of sexual harassment at any time if:

a. The Complainant voluntarily withdraws any or all of the allegations in the Complaint and the Title IX Coordinator declines to initiate a Complaint;

b. The Respondent is no longer enrolled or employed by the College;

c. The College is unable to identify the Respondent after taking reasonable steps to do so; or

d. The College determines the conduct alleged in the Complaint would not constitute a violation of this Policy and Procedure, even if proven.

The Title IX Coordinator will notify the parties if a Formal Complaint of sexual harassment is closed under this section, including the reason(s) for closure, and direct the parties to the appropriate College office or department to resolve the report or complaint. All parties may appeal the Title IX Coordinator's dismissal of a Formal Complaint under this section by using the appeal procedures in Section VI, below.

7. Confidentiality/Privacy

a. The College makes every effort to preserve the Parties' privacy. The College will not share the identity of any individual who has made a report of sexual harassment, any Complainant, any individual who has been reported to be the perpetrator of sexual harassment, any Respondent, or any witness, except as permitted or required by or to fulfill the purposes of applicable laws and regulations.

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b. Parties and Advisors are prohibited from unauthorized disclosure of information obtained by the College through these Procedures to the extent that information is the work product of the College, meaning it has been produced, compiled, or written by the College for purposes of its investigation and resolution of a Formal Complaint. It is also a violation of these Procedures to publicly disclose institutional work product that contains a Party or witness's personally identifiable information without authorization or consent.

8. Regardless of when alleged sexual harassment is reported, a Complainant must be participating in or attempting to participate in the College's education program or activity for a Formal Complaint to be investigated.

9. Consolidation

The College may consolidate complaints of sexual harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against another party, when the allegations of sexual harassment arise out of the same facts or circumstances.

C. Informal Resolution

1. Any party may request the College facilitate an informal resolution to a sexual harassment complaint at any time prior to a final determination. The Title IX Coordinator may offer the parties the opportunity for informal resolution, too.

a. Upon a request for informal resolution, the Title IX Coordinator determines whether informal resolution is appropriate based on the facts and circumstances of the case. The Title IX Coordinator ensures that any proposed informal resolution is consistent with the College's obligations to prevent and redress sexual harassment.

b. A student's allegations of sexual harassment against a College employee are not eligible for informal resolution.

c. The Title IX Coordinator provides the parties with written notice of proceeding with an informal resolution, including the allegations of sexual harassment, the requirements of the informal resolution process, the potential terms that may be requested or offered in informal resolution, and what information the College will maintain, including any potential disclosures of information.

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- d. The Title IX Coordinator also designates an independent, neutral person to facilitate the informal resolution, which could be the Title IX Coordinator.
2. Informal resolution is voluntary.
- a. The Complainant and Respondent must provide written consent for informal resolution to take place.
- b. Any party has a right to end the informal resolution process at any time prior to agreeing to a resolution and begin or continue the formal investigation and grievance process.
3. Informal resolution concludes the matter only when all parties have signed a written agreement that confirms resolution of the allegations.
- a. The resolution agreement must include a waiver of the parties' right to have a formal grievance process on the allegations that have been informally resolved.
- b. Parties are prohibited from revoking or appealing a resolution agreement. Should the Respondent violate the terms of an informal resolution agreement, such violation will subject the Respondent to an investigation and the formal grievance process contained in this procedure.
4. If a resolution agreement is not reached, the College will continue with a formal investigation.

D. Investigations

1. The goal of a formal investigation is to reach a determination as to whether a Respondent has violated one or more College policies prohibiting sexual harassment and if so, remedy the effects of a violation.
- a. The Title IX Coordinator may include possible violations of other College policies that contributed to, arose from, or are otherwise related to alleged violations of this Policy and Procedure in the scope of an investigation.
- b. The Title IX Coordinator gives written notice to the Complainant and Respondent of the investigation, providing sufficient details to allow the parties to respond and prepare for initial interviews, including the identity of the parties involved (if known), the conduct alleged to be sexual harassment, the date and location of alleged incidents (if

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known), the specific policies implicated, a statement that the Respondent is presumed not responsible and a determination of responsibility is made at the conclusion of the process, information regarding the parties' right to an advisor and the right to review relevant evidence, a statement that retaliation is prohibited, information about the confidentiality of the process, and notice that the College prohibits knowingly making false statements or submitting false information during the grievance process.

- c. The Title IX Coordinator designates an investigator to investigate the allegations of sexual harassment. The Title IX Coordinator may serve as the investigator if the Title IX Coordinator is not serving in another role throughout the grievance process.
 - d. The investigator is also the decision-maker as to whether a Respondent has violated one or more College policies prohibiting sexual harassment, unless otherwise determined by the Title IX Coordinator.
2. Parties to an investigation can expect a prompt, thorough, and equitable investigation of complaints, including the opportunity for parties to ask questions, present witnesses and provide information regarding the allegations.
 3. Parties and witnesses should cooperate in the investigation process to the extent required by law and this policy. If a party or witness chooses not to participate or becomes unresponsive, the College reserves the right to continue its grievance process without their participation to ensure a prompt resolution.
 4. The standard of proof used in investigations is preponderance of the evidence. It is the College's responsibility to establish the standard of proof and gather evidence during investigations.
 5. The College aims to bring all investigations to a resolution within forty-five (45) days from the date the Title IX Coordinator determines an investigation will commence.
 - a. Extensions of timeframe for good cause are allowed, so long as written notice and the reason for the delay is provided to the parties. Good cause includes:
 - i. The complexity and/or number of the allegations;
 - ii. The severity and extent of the alleged misconduct;

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- iii. The number of parties, witnesses, and other types of evidence involved;
 - iv. The availability of the parties, witnesses, and evidence;
 - v. A request by a party to delay an investigation;
 - vi. The effect of a concurrent criminal investigation or proceeding;
 - vii. Intervening holidays, College breaks, or other closures;
 - viii. Good faith efforts to reach a resolution; or
 - ix. Other unforeseen circumstances.
- b. Investigations typically include interviews with the Complainant, the Respondent, and any witnesses, and the objective evaluation of any physical, documentary, or other evidence as appropriate and available. The College will give the Complainant and the Respondent written notice of any interview, meeting, or hearing at which a party is invited or expected to participate. This written notice may be via e-mail.
- c. The Title IX Coordinator will inform the Complainant and Respondent at regular intervals of the status of its investigation.
- d. The Parties have an equal opportunity to present witnesses and other evidence tending to prove or disprove the allegations.
6. Interviews conducted as part of an investigation under this Procedure may be recorded by the College. Recordings not authorized by the College are prohibited.
7. The Complainant and Respondent have the right to be accompanied by an advisor of their choosing during all stages of an investigation.
- a. A party may elect to change advisors during the process.
 - b. All advisors are subject to the same rules:
 - i. During the investigation, the advisor's role is limited to providing advice, guidance, and support to the Complainant or Respondent. An advisor is not permitted to act as a participant or advocate during the investigative process.
 - ii. Advisors are expected to maintain the privacy of the records shared with them.
 - iii. Advisors are expected to refrain from interfering with investigations.

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- iv. Any advisor who oversteps their role or interferes during an investigation process will be warned once. If the advisor continues to disrupt or otherwise fails to respect the limits of the advisor role, the advisor will be asked to leave. The Title IX Coordinator determines whether the advisor may return or should be replaced by a different advisor.
8. Prior to finalizing a report, the investigator provides all parties an equal opportunity to review any relevant evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint.
- a. The Complainant and Respondent may submit a written response to the evidence, including any questions a party wants asked of another party or witness, within three (3) business days after receipt of the evidence.
- i. Responses must be submitted to the investigator via email, mail, or hand delivery by 5:00 p.m. eastern standard time on the date responses are due.
- ii. Responses may not exceed 10 double-spaced pages on 8.5x11 paper with one-inch margins and 12-point font.
- b. The investigator considers any responses received from the parties and conducts any further investigation necessary or appropriate.
9. Following an investigation, the investigator submits an investigative report and written determination to the parties that fairly summarizes relevant evidence. The report and determination includes a summary of the allegations; a summary of the response; a summary of the investigative steps taken to verify the allegations and response; a summary of the evidence relevant to a determination of responsibility; a determination on the question of responsibility, including rationale for the result and any discipline sanction that the College is permitted to share pursuant to State or federal law; and the procedures and permissible bases for the parties to appeal.
10. In cases where the Respondent is a student, after the investigative report and written determination has been sent to the parties, all parties shall have three business (3) days to request a hearing. If either party requests a hearing, the hearing procedures described in College Procedure 6.3.2.2, *Discipline and Appeal for Non-Academic Violations* shall be followed, except that 1) all parties shall have the right to participate in the hearing to the extent required by Title IX; and 2) a single hearing officer will be utilized in lieu of a committee.

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E. The following sanctions may be imposed for those who have violated these Procedures:

1. Students

- a. Verbal or Written Warning
- b. Restrictions
- c. Probation
- d. Administrative withdrawal from a course without refund
- e. Required Counseling
- f. No Contact Directive
- g. Suspension
- h. Expulsion
- i. Other consequences deemed appropriate to the specific violation

2. Employees

- a. Verbal or Written Warning
- b. Performance Improvement Plan
- c. Required Counseling
- d. Required Training or Education
- e. Transfer or reassignment
- f. Demotion
- g. Suspension with or without Pay
- h. Dismissal
- i. Other consequences or conditions of employment deemed appropriate to the specific violation

If the investigator or hearing officer finds student expulsion or employee suspension, demotion or dismissal is an appropriate sanction for a Respondent, but the investigator does not have authority to authorize such sanction, the investigator or hearing officer will make a recommendation of the sanction to the appropriate College official after the time for appeal has expired. If the investigator or hearing officer recommends the Respondent be expelled, suspended, demoted, or dismissed, during the time in which either party has to appeal, the Respondent shall remain in their current status (allowed on campus, on emergency removal, or on paid administrative leave) unless otherwise determined by the appropriate College official.

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V. APPEALS

After the investigator submits their investigative report and written determination to the Complainant and Respondent, all parties are given an equal opportunity to appeal the determination. Appeals may be based only on these grounds:

- A. Procedural irregularity that would change the outcome;
- B. New evidence that was not reasonably available at the time of the decision that would change the outcome; and/or
- C. The Title IX Coordinator, investigator, or decision-maker had a bias or conflict of interest for or against complainants or respondents generally or the individual Complainant or Respondent that would change the outcome.

Parties must submit any appeal, specifying at least one of the grounds above, to the President of the College by 5:00 p.m. eastern standard time via email or mail, within three business (3) days of receiving the written determination of responsibility. Appeals may not exceed ten (10) double-spaced pages on 8.5x11 paper with one-inch margins and 12-point font.

The College notifies all parties when an appeal is filed and provides all parties a copy of the appeal and a chance to submit a written statement supporting or challenging the outcome. Parties must submit written statements supporting or challenging the outcome to the President of the College by 5:00 p.m. eastern standard time via email or mail, within two business (2) days of receiving a copy of an appeal.

Within ten (10) business days of receiving an appeal, the President shall conduct a review of the record, including the appeal(s) received, any written statements supporting or challenging the outcome, the investigation report and written determination, and any accompanying evidence prior to issuing a written decision to the Complainant and Respondent that describes the result of the appeal and the rationale for the result. If the appeal does not provide information that meets the grounds for appeal, the President will deny the appeal.

The President's written decision is final.

VI. PROTECTION AGAINST RETALIATION

The College will not in any way retaliate against an individual for the purpose of interfering with any right or privilege secured by Title IX or because the individual has made a report or complaint, testified, assisted, participated, or refused to participate in any manner in an investigation, proceeding, or hearing under these Procedures.

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Retaliation is a violation of College policy regardless of whether the underlying allegations are ultimately found to have merit. Reports of retaliation are treated separately from reports or complaints of sexual harassment.

VII. LIMITED IMMUNITY

The College community encourages the reporting of misconduct and crimes. Sometimes, complainants or witnesses are hesitant to report to College officials or participate in resolution processes because they fear they themselves may be accused of various policy violations. It is in the best interest of this College that as many complainants as possible choose to report to College officials and that witnesses come forward to share what they know. To encourage reporting, the College offers sexual harassment complainants and witnesses amnesty from minor policy violations.

VIII. SUSPENDING PROCEDURES

In cases of emergency or serious misconduct, the College reserves the right to suspend this process and may enact appropriate action for the welfare and safety of the College community.

IX. STUDENT AND EMPLOYEE EDUCATION AND ANNUAL TRAINING

All College employees shall receive annual trainings on the following topics:

- A. The College's obligation to address sex discrimination in its education programs or activities;
- B. The scope of conduct that constitutes sex discrimination under Title IX, including the definition of "sex-based harassment"; and
- C. All applicable notification and information requirements.

In addition to the training that all College employees must receive, the Title IX Coordinator, investigators/decision-makers, those hearing appeals, and those involved in any informal resolution process shall receive annual trainings on the following topics:

- A. These grievance procedures;
- B. How to serve impartially, including avoiding prejudgment of facts at issue, conflicts of interest, and bias;
- C. Issues of relevance of questions and evidence; and
- D. The types of evidence that are impermissible regardless of relevance.
- E. In addition, for Title IX Coordinators: training on specific Title IX Coordinator responsibilities, the College's recordkeeping system, and Title IX recordkeeping requirements.

Each year, all students and employees will receive an electronic copy of these Procedures sent to their College email address of record. These Procedures will be

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maintained online in the College's website and a hard copy will be kept on file (in English and Spanish) in the Title IX Coordinator's office. Other translations will be made available upon request.

X. RECORDKEEPING

The College maintains all records of Title IX grievance proceedings and all materials used to train Title IX personnel for seven years.

Adopted:

Legal Reference: Title IX of the Education Amendments Act of 1972, as amended, 20 U.S.C. 1681 et seq. and its implementing regulations; Office for Civil Rights, Q&A on the Title IX Regulations on Sexual Harassment (July 2021); Office for Civil Rights, Dear Educator Letter on Title IX and Sexual Misconduct (June 23, 2021)

TITLE IX SEXUAL HARASSMENT GRIEVANCE PROCEDURES

~~A. APPLICABILITY, COMPLAINT INTAKE, AND OVERARCHING PROVISIONS~~

~~2A.01 Applicability of Grievance Procedures~~

~~As noted above, these Grievance Procedures apply to allegations of Sexual Harassment in SCC's Education Program or Activity (and to related Retaliation, at the discretion of the Title IX Coordinator). SCC treats Complainants and Respondents equitably by providing remedies to a Complainant where SCC makes a determination of responsibility for Sexual Harassment against a Respondent under these Grievance Procedures and also by following these Grievance Procedures before imposing any disciplinary sanctions against a Respondent for Sexual Harassment.~~

~~2A.02 Obligation to Respond and Initial Outreach to Complainant~~

~~When SCC has Actual Knowledge of Sexual Harassment (or allegations thereof) against a person in the United States in its Education Program or Activity, SCC is obligated to respond and to follow Title IX's specific requirements, which are addressed and incorporated in these Grievance Procedures.~~

~~Promptly upon receiving allegations of Sexual Harassment against a person in the United States in SCC's Education Program or Activity, the Title IX Coordinator will contact the~~

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~~Complainant to discuss the availability of Supportive Measures with or without the filing of a Formal Complaint and to explain to the Complainant the process for filing a Formal Complaint.~~

2A.03 — Filing of a Formal Complaint

~~As noted in the Definitions section above, a Formal Complaint means a document filed by a Complainant or signed by the Title IX Coordinator alleging Sexual Harassment against a Respondent and requesting that SCC investigate the allegation(s) of Sexual Harassment. At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in SCC's Education Program or Activity. A Formal Complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information listed in Exhibit A. As used in this paragraph, the phrase "document filed by a Complainant" means a document or electronic submission that contains the Complainant's physical or digital signature or otherwise indicates that the Complainant is the person filing the Formal Complaint. Use of the official SCC email is the preferred way to file.~~

~~When the Title IX Coordinator believes that, with or without the Complainant's desire to participate in a grievance process, a non-deliberately indifferent response to the allegations requires an investigation, the Title IX Coordinator has the discretion to initiate the grievance process by signing a Formal Complaint. Where the Title IX Coordinator signs a Formal Complaint, the Title IX Coordinator is not a Complainant or otherwise a party under these Grievance Procedures. Furthermore, initiation of a Formal Complaint by the Title IX Coordinator is not sufficient alone to imply bias or that the Title IX Coordinator is taking a position adverse to the Respondent.~~

~~Once a Formal Complaint is initiated, an alleged victim will be referred to as a "Complainant," and an alleged perpetrator will be referred to as a "Respondent."~~

2A.04 — Notice of Allegations

~~Upon receipt of a Formal Complaint, the Title IX Coordinator will provide the Complainant and any known Respondent written notice of these Grievance Procedures and of the allegations of conduct potentially constituting Sexual Harassment, including sufficient details known at the time and with at least five days to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting Sexual Harassment, and the date and location of the alleged incident, if known.~~

~~The written notice will include 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 the grievance process. The written notice also will inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney and that at appropriate junctures the parties and their advisors may review and inspect evidence collected during the investigation. Additionally, the written notice will inform the parties of SCC's prohibition on knowingly making false statements or knowingly submitting false information during the grievance process.~~

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~~If, in the course of an investigation, SCC decides to investigate allegations of Sexual Harassment involving the Complainant or Respondent that are not included in the original written notice of allegations, SCC will provide notice of the additional allegations to the parties whose identities are known.~~

2A.05 — Dismissal

~~SCC will investigate the allegations in a Formal Complaint; however, SCC will dismiss a Formal Complaint or a portion of the allegations therein if (1) the conduct alleged in the Formal Complaint, even if substantiated, would not constitute Sexual Harassment; (2) at the time of filing the Formal Complaint the Complainant was not participating in or attempting to participate in SCC's Education Program or Activity; (3) the conduct alleged in the Formal Complaint did not occur in SCC's Education Program or Activity; or (4) the conduct alleged in the Formal Complaint did not occur against an individual in the United States. Such a dismissal may take place at the conclusion of the investigation or at any time prior to the conclusion of the investigation.~~

~~Additionally, SCC **may** dismiss a Formal Complaint or a portion of the allegations therein if (1) the Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein; (2) the Respondent is no longer enrolled or employed at SCC; or (3) despite efforts to do so, SCC is unable to gather evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.~~

~~In the event the Title IX Coordinator determines that dismissal of a Formal Complaint or a portion of the allegations is appropriate, the Title IX Coordinator will promptly notify the parties in writing of the dismissal and the reasons for it. Dismissal does not impair SCC's ability to proceed with any appropriate investigatory or disciplinary actions under the Sex Discrimination and Harassment Policy or SCC's Standards of Student Conduct or Employee Code of Conduct policies; and/or to provide Supportive Measures to the parties.~~

~~Either party may appeal a decision to dismiss a Formal Complaint or a portion of the allegations on the following grounds by submitting a written appeal to the Title IX Coordinator within five days of the issuance of the written notice of the dismissal: (1) procedural irregularity that affected the decision to dismiss; (2) new evidence that was not reasonably available at the time of dismissal and that could affect the outcome of the matter; or (3) the Title IX Coordinator or other participant in the dismissal having a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the decision to dismiss.~~

~~The Title IX Coordinator will promptly notify the other party of the appeal, and the non-appealing party may submit a response to the appeal within three days of notification of the appeal~~

~~The Title IX Coordinator will appoint an appeal officer and will contemporaneously share the appeal officer's name and contact information with the Complainant and the Respondent.~~

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~~Within two days of such appointment, the Complainant, or the Respondent may identify to the Title IX Coordinator in writing alleged conflicts of interest or bias on the part of the appeal officer. The Title IX Coordinator will consider such statements and will promptly assign a different appeal officer if the Title IX Coordinator determines that a material conflict of interest or material bias exists.~~

~~The Title IX Coordinator will forward the Formal Complaint and any documents upon which the dismissal decision was based, as well as the appeal and any response to the appeal to the appeal officer.~~

~~Within seven days of receipt of these materials, the appeal officer will determine whether any of the grounds for appeal warrant overturning or modifying the dismissal. The decision by the appeal officer is final.~~

2A.06 — Advisers

~~The Complainant and the Respondent may be accompanied to any meeting or proceeding under these Grievance Procedures by the advisor of their choice, who may be, but is not required to be, an attorney. SCC will not limit the choice or presence of the advisor for either the Complainant or the Respondent in any meeting or grievance proceeding. Advisers, however, are not allowed to disrupt any such meeting or proceeding or to speak on behalf of the Complainant or the Respondent, with the exception of cross-examination during any hearing conducted under these Grievance Procedures, which must be conducted by an advisor and never personally by the Complainant or the Respondent.~~

~~Parties must provide the name and contact of their advisor to the Title IX Coordinator in writing as soon as reasonably possible and must provide updated information if their advisor changes. All advisers will be required to assent to SCC's Expectations for Advisers.~~

~~If a party does not have an advisor present at the hearing, SCC will provide, without any charge to that party, an advisor of SCC's choice who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party.~~

~~Absent accommodation for a disability, the Complainant and the Respondent may not be accompanied by more than one advisor or by other individuals during meetings or proceedings under these Grievance Procedures.~~

2A.07 — Timing

~~SCC will make every reasonable effort to ensure that the investigation and resolution of a Formal Complaint occurs in as timely and efficient a manner as possible. The timelines set forth in these Grievance Procedures are guidelines and may be altered for good cause with written notice to the Complainant and the Respondent of any delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; natural disasters,~~

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~~pandemic restrictions, and similar occurrences; or the need for language assistance or accommodation of disabilities.~~

~~SCC will strive to complete its investigation and resolution of a Formal Complaint (not including an appeal, if applicable) within 90 days of the receipt of the Formal Complaint, absent extenuating circumstances. Hearings generally will take place within 20 days of the conclusion of the investigation. Within seven days of the conclusion of the hearing, both the Complainant and the Respondent will receive a final outcome letter.~~

~~Either party may request an extension of any deadline by providing the Title IX Coordinator with a written request for an extension that includes reference to the duration of the proposed extension and the basis for the request. The Title IX Coordinator will review the request and will make a determination with regard to the request within three days.~~

~~2A.08 — Written Notice of Meetings~~

~~SCC will provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings with sufficient time for the party to prepare to participate.~~

~~2A.09 — Effect of Corollary Criminal Investigation~~

~~SCC's investigation may be delayed temporarily while criminal investigators are gathering evidence. In the event of such a delay, SCC will implement any appropriate Supportive Measures and will evaluate the need for other actions necessary to assist or protect the Complainant, the Respondent, and/or the SCC community.~~

~~Neither the results of a criminal investigation nor the decision of law enforcement to investigate or decline to investigate a matter is determinative of whether Sexual Harassment has occurred in the eyes of SCC.~~

~~2A.10 — Emergency Removal and Administrative Leave~~

~~SCC may remove a Respondent from SCC's Education Program or Activity on an emergency basis, provided that SCC first undertakes an individualized safety and risk analysis, 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, provides the Respondent with notice and an opportunity to challenge the decision immediately following the removal, and does so in accordance with the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act, as applicable.~~

~~Additionally, SCC may place a non-student employee Respondent on administrative leave during the pendency of SCC's response to allegations of Sexual Harassment provided that it does so in accordance with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act.~~

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~~2A.11 — Effect of Respondent Withdrawal, Graduation, or Resignation During Grievance Process~~

~~At the discretion of SCC, a Respondent who withdraws or resigns from SCC during the pendency of a grievance process under these Grievance Procedures is likely to be barred from SCC property and SCC activities and events and may be ineligible for re-enrollment for a minimum time period of four years. If a Respondent completes all requirements to graduate during the grievance process, SCC may hold the Respondent's diploma until full resolution of the Formal Complaint.~~

~~2A.12 — Privacy and Disclosure~~

~~Except as may be permitted by FERPA or as required by law or to carry out any investigation or resolution of sex discrimination or harassment allegations, SCC will keep private the identity of any individual who has made a report or complaint of sex discrimination or harassment (including any individual who has made a report or filed a Formal Complaint of Sexual Harassment,), any Complainant, any Respondent, and any witness.~~

~~SCC may report alleged Sexual Harassment to local law enforcement if warranted by the nature of the allegations at issue, and SCC administrators will share information regarding alleged Sexual Harassment, as appropriate and necessary, in order to address and resolve the allegation(s) at issue, prevent the recurrence of similar Sexual Harassment, and address the effects of the Sexual Harassment. Additionally, information regarding alleged Sexual Harassment may be used as a statistical, anonymous report for data collection purposes under the Clery Act.~~

~~To comply with FERPA, Title IX, and other applicable laws and to provide an orderly process for the presentation and consideration of relevant information without undue intimidation or pressure, grievance processes carried out under these Grievance Procedures are not open to the general public. Accordingly, documents prepared in connection with such processes; documents, statements, or other information introduced in interviews, meetings, and proceedings; and the final outcome letter may not be disclosed outside of those processes except as may be required or authorized by law or necessary for transcript sanction documentation.~~

~~As permitted by and subject to the limitations of FERPA, SCC reserves the right to notify parent(s) or guardian(s) of a student Respondent of the outcome of any investigation involving that Respondent, redacting names of any other students who do not consent to the disclosure of their information. At the written request of a party, SCC may include a party's advisor on communications and share access to documents, including the investigation report. This access is subject to the advisor's acknowledgment and agreement to maintain the confidentiality of the documents. While SCC strongly encourages parties to maintain privacy in connection with a grievance process, SCC does not prohibit parties from discussing the allegations under investigation or in any way inhibit the parties from gathering or presenting~~

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~~relevant evidence. In addition, SCC's policy does not prohibit disclosure of the final outcome letter by either the Complainant or the Respondent.~~

~~2A.13 — Conflicts of Interest, Bias, and Training~~

~~SCC will ensure that any individual designated by SCC as a Title IX Coordinator, investigator, decision-maker, or informal resolution facilitator under these Grievance Procedures does not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent.~~

~~If any employee designated to participate in the investigation or resolution of a Formal Complaint is the Respondent or a relevant witness, then the Title IX Coordinator will appoint another employee to perform their duties. (If the Title IX Coordinator is the Respondent, then the President will appoint another employee to perform their duties.)~~

~~SCC also ensures that Title IX Coordinators, investigators, decision-makers, advisors, and informal resolution facilitators receive training, as applicable, on the definition of Sexual Harassment; the scope of SCC's Education Program or Activity; how to conduct an investigation and grievance process, including hearings, appeals, and informal resolution processes; and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.~~

~~SCC further ensures that decision-makers receive training on issues of relevance of questions and evidence, including when questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, and that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence. Additionally, SCC ensures that decision-makers receive training on any technology to be used at live hearings.~~

~~Materials used to train Title IX Coordinators, investigators, decision-makers, advisors, and informal resolution facilitators will not rely on sex stereotypes and promote impartial investigations and adjudications of Formal Complaints of Sexual Harassment.~~

~~2A.14 — Burden of Proof~~

~~At all times, the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on SCC, not on either of the parties.~~

~~2A.15 — Presumption of No Responsibility until Determination~~

~~Respondents are presumed to be not responsible for alleged Sexual Harassment until SCC makes a determination regarding responsibility pursuant to these Grievance Procedures.~~

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2A.16 — Objective Evaluation of All Relevant Evidence; Credibility Determinations

~~The investigators and decision-makers under these Grievance Procedures will objectively evaluate all relevant evidence, including both inculpatory and exculpatory evidence, and will not make any credibility determinations based on a person's status as a Complainant, Respondent, or witness.~~

2A.17 — Academic Freedom

~~SCC affirms its commitment to academic freedom but notes that academic freedom does not allow any form of Sexual Harassment. SCC recognizes that an essential function of education is a probing of opinions and an exploration of ideas, some of which, because they are controversial, may cause students and others discomfort. This discomfort, as a product of free academic inquiry within a faculty member's area(s) of expertise, shall in no way be considered or construed to constitute Sexual Harassment. Academic inquiry may involve teaching, research and extramural speech. Furthermore, nothing in this document shall be interpreted to prohibit bona fide academic requirements for a specific SCC program or activity. When investigating complaints that a party or the Title IX Coordinator believes may involve issues of academic freedom, the Title IX Coordinator will consult with the Executive Vice President for Instruction and Student Services with respect to contemporary academic practices and standards.~~

2A.18 — Documentation

~~SCC will retain documentation (including but not limited to any Formal Complaint, notifications, recording or transcripts of interviews, investigative report, written findings of fact, petitions for appeal, notifications of decisions (including the final outcome letter), audio recordings of hearings, and written communication with the Complainant and Respondent), for no less than seven years.~~

2A.19 — Consolidation of Formal Complaints

~~SCC may consolidate Formal Complaints as to allegations of Sexual Harassment against more than one Respondent, by more than one Complainant against one or more Respondents, or by one party against the other party where the allegations of Sexual Harassment arise out of the same facts or circumstances. Where a grievance process involves more than one Complainant or more than one Respondent, references in these Grievance Procedures to the singular "party," "Complainant," or "Respondent" include the plural, as applicable.~~

2A.20 — Individuals with Disabilities

~~SCC will make arrangements to ensure that individuals with disabilities are provided appropriate accommodations, to the extent necessary and available, to participate in SCC's grievance processes. Student requests for accommodation must be made to Tonya Basse at 828-339-4326. All other requests for accommodation must be made to Lisa Sizemore.~~

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~~B. THE INVESTIGATION~~

~~2B.01 Appointment of Investigators and Challenging of the Same~~

~~Unless a Formal Complaint is dismissed or the parties elect to participate in informal resolution, the Title IX Coordinator will promptly appoint one or more investigators. These investigators may be SCC employees, non-employees, or a combination of the two. The Title IX Coordinator will contemporaneously share their names and contact information with the Complainant and Respondent and also will forward a copy of the Formal Complaint to the investigators.~~

~~Within two days of such appointment, the Complainant or the Respondent may identify to the Title IX Coordinator in writing any alleged conflicts of interest or bias on the part of the assigned investigators. The Title IX Coordinator will consider such statements and will promptly assign different investigators if the Title IX Coordinator determines that a material conflict of interest or material bias exists.~~

~~2B.02 The Investigators' Activities~~

~~Upon receipt of the Formal Complaint, the investigators will promptly begin their investigation, taking such steps as interviewing the Complainant, the Respondent, and witnesses (including expert witnesses, where applicable); summarizing such interviews in writing; collecting and reviewing relevant documents; visiting, inspecting, and taking or reviewing photographs of relevant sites; and collecting and reviewing other relevant evidence.~~

~~2B.03 The Investigative Report and Evidence Review~~

~~The investigators will prepare a written investigative report that fairly summarizes relevant evidence and includes items such as the Formal Complaint, written statements of position, summaries or transcripts of all interviews conducted, photographs, descriptions of relevant evidence, and summaries or copies of relevant electronic records.~~

~~Prior to the completion of the investigative report, the investigators will send to each party and the party's advisor, if any, an electronic or hard copy of any evidence obtained during the investigation that is directly related to the allegations raised in the Formal Complaint, including (1) any evidence upon which SCC does not intend to rely in reaching a determination regarding responsibility; and (2) both inculpatory and exculpatory evidence.~~

~~The parties have ten days from the time that the evidence is provided to submit to the investigators a written response to the evidence. In the response, the parties may address the relevancy of any evidence that the parties believe should be included in or excluded from the investigative report and may also address any further investigation activities or questions that they believe are necessary. If a party wishes to submit additional evidence at this stage, they should explain how the evidence is relevant and why it was not previously provided.~~

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~~The investigators will review and consider the parties' written submissions and may conduct additional investigative activities as appropriate prior to finalizing the investigative report. The need for additional investigative activities may result in a delay or extension to the timelines set forth in these Grievance Procedures.~~

~~At least ten days prior to the hearing, the investigators will send an electronic or hard copy of the investigative report to each party and the party's advisor, if any. Any response a party wishes to make to the investigative report may be included in that party's pre-hearing statement, which is discussed more below in Section 2C.05.~~

~~Due to the sensitive nature of the investigative report, neither the parties nor their advisors may copy, publish, photograph, print, image, record or in any other manner duplicate the report. Parties who violate these restrictions may be disciplined, and advisors who violate these restrictions may be disciplined and/or be barred from further participation in the grievance process.~~

~~Nothing in this document restricts the ability of either party to discuss the allegations under investigation or to gather, preserve, and/or present relevant evidence.~~

2B.04 — Submission of Evidence; Expert Witnesses

~~Any evidence that the parties wish for the hearing officer to consider should be presented to the investigators as early as possible during the investigation process. Evidence that is not submitted in a timely manner and prior to finalization of the investigative report may be excluded from the hearing at the discretion of the hearing officer.~~

~~Similarly, all relevant witnesses should be identified to the investigators as early as possible during the investigation. The hearing officer generally will not call or consider written statements from witnesses who were not identified to investigators and interviewed during the investigation. However, in their discretion and for good cause, the hearing officer may choose to consider information from witnesses who were not interviewed during the investigation.~~

~~Any party who wishes to present testimony from an expert witness should identify that witness by providing the witness's name, contact information and a summary of (1) the witness's qualifications to offer expert testimony; and (2) any opinions the witness expects to offer related to the allegations or evidence. Any evidence upon which the witness relies must be provided to the investigators and will be made available to the other party and their advisor, as well as to any expert witness the other party has identified. This information must be provided as early as possible in the investigation and in no event later than finalization of the investigative report. The parties must make any expert witnesses available to be interviewed by investigators and to testify at the hearing. If an expert witness is not available to provide live testimony at the hearing, the hearing officer must disregard any information submitted by that expert.~~

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2B.05 — Treatment Records

~~SCC will not access, consider, disclose, or otherwise use in a grievance process any party's treatment records that are maintained by a physician, psychiatrist, psychologist or other recognized professional or paraprofessional acting in their professional/paraprofessional capacity unless the party provides voluntary, written consent.~~

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~~C. HEARING AND APPEALS~~

~~2C.01 Respondent's Acknowledgement of Responsibility~~

~~If, at any time prior to a responsibility determination by the hearing officer, a Respondent accepts responsibility for the allegations, and if the Title IX Coordinator determines that the matter is appropriate for informal resolution, the Title IX Coordinator will ask both parties if they wish to suspend the formal resolution process and engage in an informal resolution process to resolve the allegations without a hearing.~~

~~If both parties wish to engage in the informal resolution process, the Title IX Coordinator will propose sanction(s) for the Respondent. If the Complainant and the Respondent agree in writing to such proposed sanctions(s), then the Formal Complaint will be resolved without a hearing and without any further rights of appeal by any party.~~

~~If either the Complainant or the Respondent objects to such proposed sanction(s), then the hearing officer will determine sanctions, which are subject to appeal as set forth below.~~

~~2C.02 The Formal Resolution Process~~

~~Unless a Formal Complaint is dismissed or the parties elect to participate in informal resolution pursuant to section 2D.01 below, following the investigation the appointed hearing officer will conduct a hearing in which they may question the Complainant, the Respondent, and any witnesses whose testimony the hearing officer deems relevant. During the hearing, the hearing officer and the parties may also question the investigators as necessary to clarify information provided in the investigative report.~~

~~2C.03 Appointment of the Hearing Officer and Challenging of the Same~~

~~The Title IX Coordinator will appoint a hearing officer, who will administer the hearing, serve as the decision-maker regarding responsibility, and (as applicable) recommend sanctions. The hearing officer may be a SCC employee or non-employee. The Title IX Coordinator will contemporaneously share the hearing officer's name and contact information with the Complainant and the Respondent. The Title IX Coordinator will provide to the hearing officer the Formal Complaint, all evidence directly related to the allegations, the parties' written responses to the evidence, and the investigative report.~~

~~Within two days of such appointment, the Complainant or the Respondent may identify to the Title IX Coordinator in writing any alleged conflicts of interest or bias on the part of the hearing officer. The Title IX Coordinator will carefully consider such statements and will promptly assign a different hearing officer if the Title IX Coordinator determines that a material conflict of interest or material bias exists.~~

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2C.04 — Notice of the Hearing

~~Promptly after the appointment of the hearing officer and no less than seven days prior to the hearing, the hearing officer will provide concurrent written notice to the Complainant and the Respondent setting forth the date, time, and location of the hearing. Any modifications to the hearing date, time, or location will be provided in writing to both parties prior to the date of the hearing.~~

2C.05 — Pre-Hearing Submissions

~~Each party may submit a written statement to the hearing officer that includes any response the party wishes to make to the investigative report. Each party's pre-hearing statement must be submitted at least five days prior to the hearing. The hearing officer will share the statement with the other party, who may submit a response within two days.~~

2C.06 — Failure to Appear

~~If any party, advisor, or witness fails to appear at the hearing after having been provided proper notice of the hearing as set forth above, then absent of any extenuating circumstances the hearing officer will proceed with the hearing and issuance of their responsibility determination and, as applicable, sanction recommendation. SCC will provide an advisor to any party who attends the hearing unaccompanied.~~

2C.07 — Evidentiary Matters

~~A Title IX hearing does not take place within a court of law and is not bound by formal rules of evidence.~~

~~Evidence of and questions about the Complainant's sexual predisposition or prior sexual behavior are not relevant and will not be permitted at the hearing, with the following exceptions: (1) if the 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 (2) 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.~~

~~Evidence regarding the past sexual activity of the Respondent (regardless of whether the Respondent was formally investigated or found responsible for such conduct) may be permitted to show that the Respondent has engaged in a pattern of behavior similar to the alleged Sexual Harassment at issue before the hearing officer, provided that the Respondent has not been found "not responsible" by SCC in a proceeding related to such conduct.~~

~~SCC will not access, consider, disclose, or otherwise use in a grievance process any party's treatment records that are maintained by a physician, psychiatrist, psychologist or other recognized professional or paraprofessional acting in their professional/paraprofessional capacity unless the party provides voluntary, written consent. Questions and/or evidence that~~

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~~constitute or seek disclosure of information protected under a legally recognized privilege are not permitted, unless the person holding the privilege has waived the privilege in writing.~~

~~SCC will make the evidence that the investigators provided to the parties for their review and inspection prior to finalization of the investigative report available at the hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.~~

2C.08 — Conduct of the Hearing and Questioning of Witnesses and Parties

~~The hearing will be conducted with parties in separate rooms, using technology to ensure that each party can see and hear any party or witness answering questions. At the discretion of the hearing officer, the hearing may be conducted partially or entirely remotely, with any or all participants participating virtually.~~

~~The Complainant and the Respondent will have equal opportunity to address the hearing officer, if desired, and both the hearing officer and the parties' advisors will have the opportunity to question the other party and any witnesses, including investigators and expert witnesses. The hearing officer will first ask any questions of each party and each witness through direct examination. After the hearing officer has completed direct examination, the advisor for each party will have an opportunity to conduct a cross-examination of the other party and/or the witnesses. Any questions that a party has for a witness or the other party must be posed by the party's advisor. A party's advisor will not have the opportunity to question the party for whom they serve as advisor.~~

~~Before a party or witness answers a cross-examination question, the hearing officer will determine whether the question is relevant and allowed under these Grievance Procedures. For example, the hearing officer may exclude as not relevant duplicative questions or questions posed solely to harass a witness or the other party. The hearing officer will explain any decision to exclude a question.~~

~~If a party does not have an advisor present at the hearing, SCC will provide an advisor, at no cost to the party, to conduct cross-examination on behalf of that party.~~

~~Members of the SCC community are expected to provide truthful testimony, and any member of the SCC community who knowingly provides false information during this process is subject to discipline.~~

2C.09 — Unavailability or Refusal to Testify or Submit to Cross-Examination

~~The Respondent and/or the Complainant may choose not to testify at the hearing; however, the exercise of that option will not preclude the hearing officer from making their responsibility determination and, as applicable, sanction recommendation regarding the Formal Complaint. Also, if a party or witness does not submit to cross-examination at the hearing, the hearing officer will not rely on any statement of that party or witness in reaching a determination regarding responsibility or, as applicable, recommendation regarding sanctions. The hearing~~

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~~officer will not draw an inference regarding responsibility or sanctions based solely on a party's or witness' absence from the hearing or refusal to testify or submit to cross-examination.~~

2C.10—Recording

~~SCC will record the hearing. This recording will be the only recording permitted of the proceedings and will be the property of SCC. The parties and the appeal officer may use the recording as part of the appeal process. Reasonable care will be taken to ensure a quality recording; however, technological problems that result in no recording or in an inaudible one will not affect the validity of the outcome of a hearing.~~

2C.11—The Determination of the Hearing Officer Regarding Responsibility

~~Following the hearing, the hearing officer will determine if the evidence is **clear and convincing** that the Respondent committed Sexual Harassment. The hearing officer will render a finding of "Responsible" or "Not Responsible" and will provide the rationale for the decision. If the Respondent is found "Responsible," the hearing officer will specify the specific type(s) of Sexual Harassment for which the Respondent is found "Responsible" (for example, Sexual Assault, Stalking, etc.). When feasible, the hearing officer will orally communicate the finding of "Responsible" or "Not Responsible" to the parties on the day of or day following the hearing. Additional information regarding the decision, including the rationale and sanctions (if applicable) will be communicated in the final outcome letter (as described below).~~

2C.12—The Recommendation of the Hearing Officer Regarding Sanctions

~~If the hearing officer determines that the Respondent is "Responsible," they will recommend appropriate sanctions to be imposed on the Respondent.~~

~~Sanctions following a finding of responsibility depend upon the nature, gravity and totality of the misconduct, any record of prior discipline, or both. Sanctions for employees may include, but are not limited to, withholding a promotion or pay increase, reassigning employment, terminating employment, temporary suspension without pay, and compensation adjustments.~~

~~Sanctions for students may include, but are not limited to, expulsion or suspension from campus, disciplinary probation, restrictive probation, revocation of admission, suspension or revocation of degree.~~

~~Other potential sanctions for Respondents may include, but are not limited to, written warning, mandated counseling, completion of an intervention program, completion of violence risk assessment, parental notification, and/or education sanctions (such as monetary restitution) as deemed appropriate by the hearing officer.~~

~~In recommending sanctions, the hearing officer will consider whether a sanction will bring an end to, prevent a recurrence of, and remedy the effects of the Sexual Harassment. The hearing officer also will consider the impact of separating a student from their education. The~~

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~~appropriate sanctions for Sexual Assault generally will include at a minimum a period of separation from SCC.~~

~~2C.13 — Review of Sanctions~~

~~The hearing officer will forward their sanctions recommendation to the appropriate Title IX Coordinator, Cheryl Contino-Conner (in cases involving student Respondents), or Lisa Sizemore (in cases involving faculty or staff Respondents). These individuals will consider the recommendation in the context of the sanctioning guidelines, the Respondent's disciplinary history, the institution's handling of similar cases, and other relevant factors.~~

~~2C.14 — Implementation of Sanctions~~

~~Sanctions generally are effective immediately upon issuance of the final outcome letter described below. However, if necessary to protect the welfare of the Complainant, Respondent, or SCC community, the hearing officer may recommend and/or the Title IX Coordinator may determine that any sanctions are effective at any time after the conclusion of the hearing and continue in effect until the issuance of the final outcome letter.~~

~~2C.15 — Final Outcome Letter~~

~~Within seven days after the hearing, the hearing officer will issue a final outcome letter through the Title IX Coordinator to the Respondent and Complainant simultaneously.~~

~~The final outcome letter will (1) name the Respondent; (2) identify the allegations potentially constituting Sexual Harassment; (3) describe procedural steps taken from the filing of the Formal Complainant through the determination; (4) provide findings of fact in support of the hearing officer's determination; and (5) provide a statement of rationale for the result as to each allegation, including the responsibility determination and any sanctions.~~

~~2C.16 — Appeals~~

~~The Complainant or the Respondent may appeal the decision of the hearing officer regarding responsibility and/or the sanction(s) imposed on the Respondent.~~

~~The following are the only permissible grounds for an appeal of the hearing officer's responsibility determination: (1) procedural irregularity that affected the outcome; (2) new evidence that was not reasonably available at the time of the determination and that could affect the outcome; and (3) the Title IX Coordinator, an investigator, or the hearing officer had a conflict of interest or bias that affected the outcome.~~

~~Sanctions may only be appealed on the ground that the severity is incommensurate to the gravity of the Sexual Harassment for which the Respondent was found responsible.~~

~~Appeals must be submitted in writing to the Title IX Coordinator within five days from the date of the final outcome letter. The Title IX Coordinator will promptly inform the other party of the~~

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~~filing of the appeal. The other party will have three days from such notification to submit a written response to the appeal.~~

~~2C.17 — Appointment of the Appeal Officer and Challenging of the Same~~

~~Upon receipt of an appeal, the Title IX Coordinator, in consultation with the Executive VP for Instruction and Student Services (if the Formal Complaint involves students), the Vice President for Finance and Administrative Services (if the Formal Complaint involves faculty or staff) will appoint an appeal officer.~~

~~Within two days of such appointment, the Complainant or the Respondent may identify to the Title IX Coordinator in writing alleged conflicts of interest or bias posed by assigning that appeal officer. The Title IX Coordinator will carefully consider such statements and will promptly assign a different appeal officer if the Title IX Coordinator determines that a material conflict of interest or material bias exists.~~

~~2C.18 — Appellate Review~~

~~The Title IX Coordinator will share the Formal Complaint, the investigative report, the hearing recording, all statements introduced at the hearing, any other evidence considered by the hearing officer, the hearing officer's written findings, and the written appeal submissions with the appeal officer. In addition, if an appeal raises procedural issues, the Title IX Coordinator may provide the appeal officer additional information relevant to those issues.~~

~~Within ten days of the receipt of the appeal the appeal officer will determine (a) that the decision of the hearing officer should stand; or (b) that the decision of the hearing officer should be overturned and will issue a written explanation of that result and the rationale behind it.~~

~~In the event that the appeal officer determines that the decision of the hearing officer should be overturned, the appeal officer will specify, after consultation with the Title IX Coordinator and other SCC administrators as necessary, the appropriate steps to be taken to come to a final resolution of the Formal Complaint (which may include another hearing before the same hearing officer or a different one).~~

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~~D. ——— INFORMAL RESOLUTION~~

~~2D.01 ——— Determination of Formal Versus Informal Resolution~~

~~At any time before the issuance of the hearing officer's responsibility determination, the parties may elect to resolve the Formal Complaint through the informal resolution process, provided that (1) the parties both voluntarily consent in writing to such resolution; (2) both parties are students or employees of SCC; and (3) the Title IX Coordinator determines that informal resolution is an appropriate mechanism for resolving that specific Formal Complaint. Otherwise, a Formal Complaint that is not dismissed will proceed to a hearing. Informal resolution is not an appropriate mechanism for resolving a Formal Complaint by a student against an employee.~~

~~Informal resolution may not be selected for less than all of the misconduct alleged in the Formal Complaint. If the parties agree to informal resolution (and informal resolution is appropriate for all of the allegations at issue), then all of the allegations must be resolved according to the informal resolution process.~~

~~Either party has the right to terminate the informal resolution process at any time and proceed with formal resolution (i.e., a full investigation and hearing). Furthermore, the Title IX Coordinator may, where appropriate, terminate informal resolution and proceed with the formal resolution process instead.~~

~~2D.02 ——— Confidentiality of Information Shared~~

~~Any information that the parties share during the informal resolution process may not be used in any other investigation or proceeding at SCC~~

~~2D.03 ——— Notice of Allegations and Notice of Informal Resolution and Facilitator~~

~~The Title IX Coordinator will provide the parties a written notice disclosing the Formal Complaint's allegations and the requirements of the informal resolution process, including any circumstances under which SCC would preclude the parties from resuming a Formal Complaint arising from the same allegations.~~

~~When the Formal Complaint is to be resolved according to the informal resolution process, the Title IX Coordinator will designate a trained individual to serve as the informal resolution facilitator. The Title IX Coordinator will contemporaneously share the name of the informal resolution facilitator with the Complainant and the Respondent.~~

~~Within two days of such notification, the Complainant or Respondent may identify to the Title IX Coordinator in writing alleged conflicts of interest or bias posed by assigning that facilitator.~~

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~~The Title IX Coordinator will carefully consider such statements and will promptly assign a different facilitator if the Title IX Coordinator determines that a material conflict of interest or material bias exists.~~

2D.04 — Facilitated Resolution

~~The informal resolution facilitator will meet separately with each party to review the informal resolution process and the allegations in the Formal Complaint and to identify the outcome that each party seeks from the informal resolution process. If the facilitator determines that it would be productive for both parties to attend a resolution meeting, the facilitator will provide written notice to the Complainant and the Respondent setting forth the date, time, and location of that meeting. At the request of either party or at the discretion of the informal resolution facilitator, the meeting may occur with the parties in different locations or meetings with parties may take place on different dates.~~

~~Both the Complainant and the Respondent are expected to participate in the informal resolution process. If either party fails to participate, the Title IX Coordinator may direct that the Formal Complaint be resolved using a full investigation and hearing or may reschedule the meeting.~~

~~During informal resolution, the parties may: (1) engage one another in the presence of, and/or facilitated by, the informal resolution facilitator; (2) communicate their feelings and perceptions regarding the incident and the impact of the incident (either by communicating directly with one another or by communicating indirectly through the informal resolution facilitator); (3) relay their wishes and expectations regarding the future; and/or (4) come to an agreed-upon resolution of the allegations in the Formal Complaint.~~

2D.05 — Resolution

~~The informal resolution facilitator will attempt to facilitate the parties' resolution of the Formal Complaint. If this process results in a resolution between the parties and the Title IX Coordinator finds the resolution to be appropriate under the circumstances (giving consideration to factors including the extent to which the resolution will protect the safety of the Complainant and the entire SCC community), the resolution will be reduced to writing, which will conclude the process and close the Formal Complaint.~~

2D.06 — Written Resolution Agreement

~~To be effective, any agreement reached during the informal resolution process must be memorialized in writing and signed by the parties, the informal resolution facilitator, and the Title IX Coordinator. If a Respondent completes all measures agreed to in the written resolution agreement, no further process is available with regard to the allegations in the Formal Complaint.~~

~~Measures that parties agree to in the informal resolution process may include (but are not limited to):~~

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- ~~1) — Completion of online sexual harassment training;~~
- ~~2) — Completion of an intervention program;~~
- ~~3) — Scheduled meetings with the SCC counselor;~~
- ~~4) — Permanent or temporary no-contact order;~~
- ~~5) — Restrictions for participation in activities, organizations, programs or classes;~~
- ~~6) — Restriction of participation in academic honor societies and academic recognitions.~~
- ~~7) — The Respondent's completion of an educational or behavioral plan.~~

~~2D.07 — Termination of Informal Resolution Process~~

~~Participation in the informal resolution process is completely voluntary, and either party, the informal resolution facilitator, or the Title IX Coordinator may terminate the process at any time PRIOR to completing a written resolution agreement. Should any party exercise the right to withdraw from the informal resolution process or if SCC determines the informal resolution process is no longer appropriate, the formal resolution process outlined above will promptly resume.~~

~~2D.08 — Timeframe~~

~~The informal resolution process generally will be completed within 20 days of the parties' agreement to the informal resolution process.~~

~~2D.09 — Appeal~~

~~A resolution reached pursuant to the informal resolution process is final and not subject to appeal.~~

~~2D.10 — Records~~

~~A resolution reached through the informal resolution process will not be included in a student Respondent's student conduct record or in an employee Respondent's personnel record, unless the inclusion of such information is agreed to as part of the informal resolution of the matter. The Title IX Coordinator will retain a record of the written resolution agreement for no less than seven years.~~

Cross Reference: 4.03.02 – Employee Code of Conduct
4.03.05 - Sex Discrimination and Harassment Policy (Employee)
6.03.01 – Campus Safety Reporting – Clery Act
6.03.02 – Standards of Student Conduct; Administrative Procedures
6.03.02.02 – Discipline and Appeal Procedure for Non-Academic Violations

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6.03.03 – Discrimination and Harassment
6.03.03.02 - Unlawful Discrimination and Harassment

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Adopted: ~~April~~ April 1999

Revised: April 28, 2015
July 28, 2015
August 14, 2020
July, 23, 2024

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