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# SWACC Title IX Resource Packet

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# INTRODUCTION

Title IX applies to student sexual harassment and misconduct matters. Under regulatory guidance, Title IX matters need to be handled carefully with a number of specific requirements. This guide was put together to assist Title IX Coordinators and Investigators with an initial response to Title IX matters. This packet contains the following documents:

## Part I – Title IX Immediate Response

1. Title IX Immediate Response Flow Chart – for use by administrators/investigators
2. Overview of Immediate Response for Title IX Matters that discusses the following:
  - Initial Response
  - Supportive Measures
  - Measures to Consider
  - Reporting Requirements
  - Special Considerations
  - Next Steps
3. Title IX Forms for use in the initial investigation process:
  - Title IX Complainant Initial Meeting Checklist
  - Title IX Respondent Initial Meeting Checklist
  - No Contact Directive Form (Supportive Measure)
  - Safety Measures Form (Supportive Measure)
4. Title IX Resources for Parties to be distributed to parties to assist with understanding the process:
  - Title IX Process Flow Chart for Parties
  - Complainant Resource Packet
  - Respondent Resource Packet

## Part II

Many districts are exploring the possibility of adopting a Hearing Panel process for handling Title IX matters. This section provides information about when to adopt a hearing panel based on current guidance, including suggested steps in creating the hearing panel model, and form policy language for the hearing panel process. You will find the following documents in this section:

1. Adopting A Hearing Panel
2. Hearing Process – Form Policy Language

The information contained herein was developed by SWAAC in cooperation with Title IX Consultant, Megan C. Farrell, [www.megancfarrell.com](http://www.megancfarrell.com), for the exclusive use of its members. Use of these documents by non-SWACC members and/or outside the SWACC-member college environment requires explicit permission of SWACC and Consultant.

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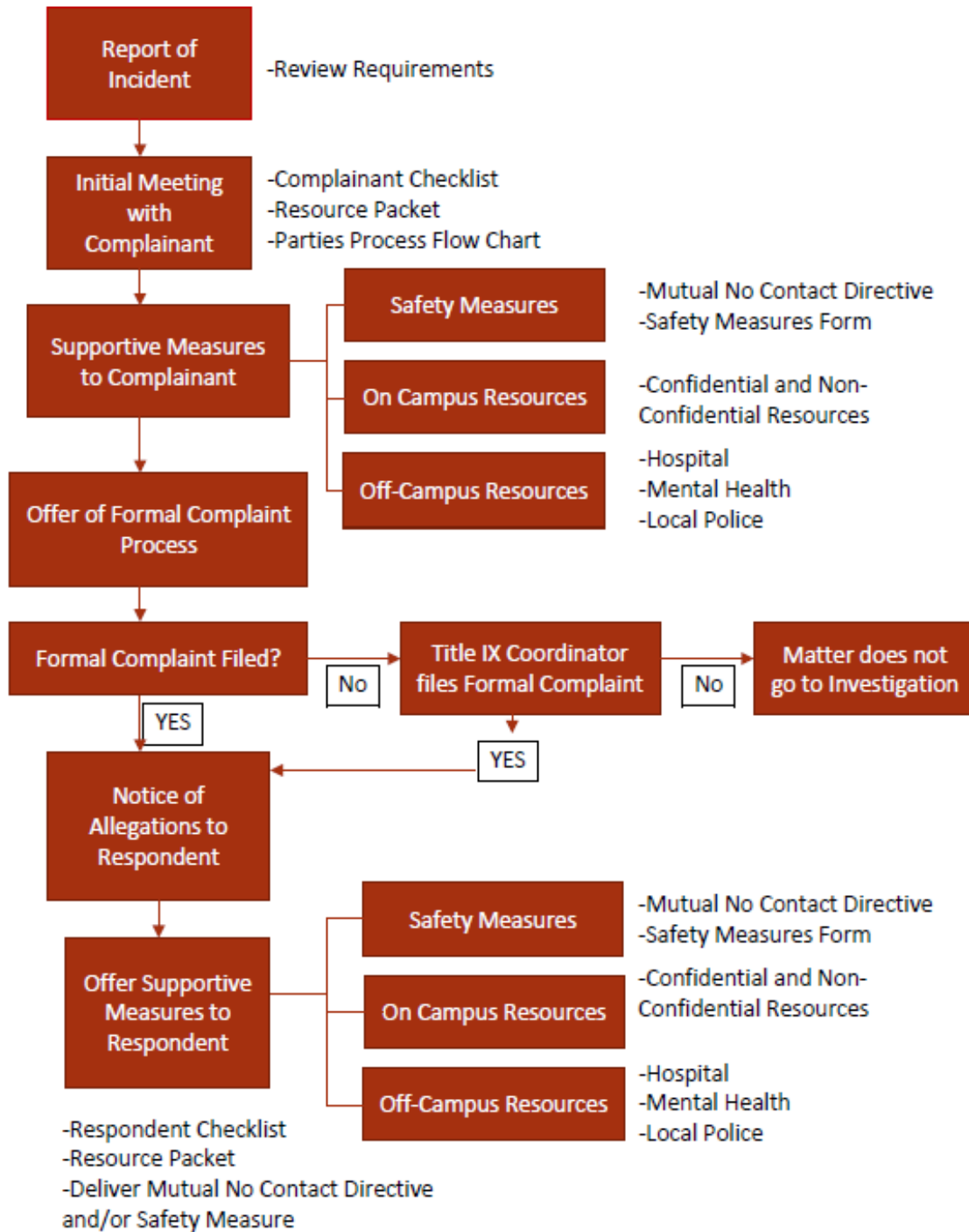


# **Title IX Immediate Response Flow Chart**



# TITLE IX IMMEDIATE RESPONSE FLOW CHART

TITLE IX IMMEDIATE RESPONSE FLOW CHART





**Notice of Title IX  
Matter – Overview of  
Immediate Response**



# NOTICE OF TITLE IX MATTER – IMMEDIATE RESPONSE

## INITIAL RESPONSE

Supportive Measures  
Reporting Requirements  
Special Considerations  
Next Steps

## SUPPORTIVE MEASURES

- REQUIREMENT – Mandatory obligation upon notice of sexual harassment or allegations of harassment includes offering “**supportive measures**” to complainant that must be non-punitive, non-disciplinary, and not unreasonably burdensome on the other party

GOAL: provide both parties with equal access to their education, protect safety, and deter sexual harassment.

- Review classes to determine if Complainant and Respondent are in same classes
  - Online scheduling system
- Examine college: related teams, clubs, etc. to determine if Complainant and Respondent are in same groups
- Other school: sponsored activities to consider
  - College events – games, dances
  - Ask Complainant and Respondent

## MEASURES TO CONSIDER

Mutual No Contact Order/Directive

- Mutual No Contact Order – an order requires parties to comply without regard to their agreement to the terms
- New guidance supports making these orders/directives mutual
- No contact in person, verbally, texting, social media, etc.
- Acknowledgement of receipt/understanding
- Online scheduling system

Safety Plan

- More extensive plan that addresses classes, parking, housing, employment, and any other concerns

## ACTIONS TO REMOVE A PARTY FROM ACCESS TO EDUCATION

Actions that could be considered disciplinary should be avoided before the conclusion of the investigation. However, when circumstances require the immediate removal of a student from an education program or activity, the college must offer the impacted student a means to immediately appeal such a decision.

## REPORTING REQUIREMENTS

- Upon notice of an incident or potential incident of sex discrimination or sexual harassment, you must report to the Title IX Office



- 
- INSERT TITLE IX COORDINATOR CONTACT INFORMATION (Note: “Title IX Coordinator” must be the title for this role) – name, office address, email, phone number)
  - Input information into the online reporting system (if applicable)
  - Determine if any external reporting is required
    - Child Protective Services (CPS) for Mandatory Reporting
    - Local police

### **SPECIAL CONSIDERATIONS**

- Reporting party is not complainant
- Complainant does not want to move forward
  - Wishes of complainant should be honored unless it “is clearly not unreasonable in light of the known circumstances”
- Title IX Officer signs complaint
- Either/both parties has/have a disability
- Named respondent has had other disciplinary issues in the past
- Contact Information Technology if evidence exists on college servers and is at risk of being lost and/or destroyed

### **NEXT STEPS**

- Contact the Title IX Office
- Put supportive measures in place and communicate the supportive measures to both parties
- Meet with Complainant to review Complainant Resource Packet and gather basic information about the allegations and discuss the formal complaint process
- Meet with Respondent to review Respondent Resource Packet
  - Send Notice of Allegations to initiate investigation process
- Keep timely and accurate notes



# Title IX Forms

# TITLE IX COMPLAINANT INITIAL MEETING CHECKLIST

- Meet with Complainant  
 Date and Time of Meeting: \_\_\_\_\_  
 Attendees: \_\_\_\_\_
  
- Review potential Supportive Measures
  - Classes and Course-Related Changes
  - Parking
  - School Activities
  - School Events
  - School Employment
  - Traveling to/from Campus
  - Escort Services
  - Increased Security
  - Monitoring Specific Areas
  - Other concerns related to safety or additional details for any checked box:  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
  
- Complainant requesting No Contact Directive
  - Yes
  - No
  - If no, explain why:  
 \_\_\_\_\_
  
- Complainant requesting Safety Plan
  - Yes
  - No
  - If no, explain why:  
 \_\_\_\_\_
  
- Review and discuss policy/procedure to file formal complaint and provide SWACC Title IX Process Flow Chart
- Provide complaint forms
- Provide Complainant Resource Packet
  
- Designate point person for Complainant
  - Yes
  - Name of point person: \_\_\_\_\_
  - No
  
- Request for campus resources (check any that Complainant is seeking):
  - Counselor

- Y Advisor
- Y Process Support

Request for off-campus resources (check any that Complainant is seeking):

- Y Outreach to police
- Y Assistance with restraining order
- Y Visit to hospital or other medical treatment
- Y Connection to any other off-campus resources

Designate type/organization: \_\_\_\_\_

\_\_\_\_\_  
Name of Employee Meeting Complainant  
(Printed)

\_\_\_\_\_  
Date of Meeting

\_\_\_\_\_  
Signature of Employee

---

\* CONSIDERATIONS when deciding Supportive Measures:

- No fixed rules; individualized
- Must be non-disciplinary, non-punitive, and not unreasonably burdensome on other party
- No assumptions that favor one party or another
- Must not deprive any party of his/her/their participation in education program or activity
- Must be reviewed with both parties before finalizing
- Must be available to both parties if investigation is undertaken

# TITLE IX RESPONDENT INITIAL MEETING CHECKLIST

- Meet with Respondent  
 Date and Time of Meeting: \_\_\_\_\_  
 Attendees: \_\_\_\_\_
  
- Deliver and review Notice of Allegations
  
- Review potential Supportive Measures
  - Classes and Course-Related Changes
  - Parking
  - School Activities
  - School Events
  - School Employment
  - Traveling to/from Campus
  - Escort services
  - Increased Security
  - Monitoring Specific Areas
  - Other concerns related to safety or additional details for any checked box:  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
  
- Respondent requesting No Contact Directive
  - Yes
  - No
  - If no, explain why:  
 \_\_\_\_\_
  
- Respondent requesting Safety Plan
  - Yes
  - No
  - If no, explain why:  
 \_\_\_\_\_
  
- Review and discuss policy/procedure and provide SWACC Title IX Process Flow Chart
- Provide Respondent Resource Packet
  
- Designate point person for Respondent
  - Yes
  - Name of point person: \_\_\_\_\_
  - No
  
- Request for campus resources (check any that Respondent is seeking):
  - Counselor

- Y Advisor
- Y Process Support

Request for off-campus resources (check any that Respondent is seeking):

- Y Outreach to police
- Y Assistance with restraining order
- Y Visit to hospital or other medical treatment
- Y Connection to any other off-campus resources

Designate type/organization: \_\_\_\_\_

\_\_\_\_\_  
Name of Employee Meeting Respondent  
(Printed)

\_\_\_\_\_  
Date of Meeting

\_\_\_\_\_  
Signature of Employee

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**CONSIDERATIONS** when deciding Supportive Measures:

- No fixed rules; individualized
- Must be non-disciplinary, non-punitive, and not unreasonably burdensome on other party
- No assumptions that favor one party or another
- Must not deprive any party of his/her/their participation in education program or activity
- Must be reviewed with both parties before finalizing
- Must be available to both parties if investigation is undertaken

# MUTUAL No CONTACT DIRECTIVE

**FILE NO. [###]  
NOTICE TO COMPLAINANT AND RESPONDENT  
[DATE OF ISSUANCE]**

(Note: These measures must be non-punitive, non-disciplinary, and not unreasonably burdensome on the other party.)

The College has received notice of an allegation involving a potential violation of the College's Policy **[INSERT: policy name and policy number]**. The Mutual Directive is not a determination of whether a policy violation occurred but is a measure to protect all the parties involved in this matter. This Directive is effective immediately and will remain in effect until **[INSERT: further notice, the end of the investigation of this matter, the end of the semester, etc.]**.

The Title IX Office issues the following Mutual No Contact Directive concerning interactions between student, **[INITIALS]**, and student, **[INITIALS]**:

- Both parties will have no direct contact and will not communicate in person, by phone, through letters, through text message, through social media, and/or any other direct or digital means.
- Both parties will not attempt to make indirect contact with each other by utilizing a third party to make contact with a party on behalf of the other party; through online outreach (e.g., liking a post on social media); by lingering or remaining at school sites where the other party might be (e.g., classroom, dorm or cafeteria); and any other attempts to make indirect contact.
- Both parties will avoid interactions while at the College.
- If the parties encounter each other at the College or at a College-sponsored event or activity, they will avoid making eye contact and move to locations away from each other.
- **[INSERT: any additional measures]**

Violations of the Mutual No Contact Directive by either party will be addressed immediately, and the violating party will be subject to disciplinary action.

College policies prohibit any and all retaliatory behavior or action against any person who reports, testifies about, files a complaint, or otherwise participates in a College complaint, investigation, or grievance process relating to an incident of discrimination, including harassment, intimidation, or bullying. In this matter, both students are protected against retaliation.

If any issue arises concerning the enforcement of this Directive, either student must contact **[INSERT: contact person's name, email address, and phone number]** at the College.

By your signature below, you acknowledge that you have been notified and have received a copy of this No Mutual Contact Directive.

## ACKNOWLEDGEMENT OF RECEIPT

\_\_\_\_\_  
Student Name (Printed)

\_\_\_\_\_  
Date

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Student Signature



# SAFETY MEASURES

**FILE NO. [###]  
NOTICE TO COMPLAINANT/REPORTER AND RESPONDENT  
[DATE OF ISSUANCE]**

(Note: These measures must be non-punitive, non-disciplinary, and not unreasonably burdensome on the other party.)

Based on concerns raised in the Title IX complaint, the Title IX Office issues the following Safety Measures that are effective immediately and will remain in effect while this matter is investigated and until further notice. The College reserves the right to revisit and revise these measures at any time.

## **Classes and Course-Related Changes**

*Detail any of the following:*

- Change in sections
- Removal from a course
- Independent study
- Excuse from attending class
- Any other class or course-related changes

## **Parking**

*Detail any of the following:*

- Designation of a parking space
- Designation of a specific parking area
- Outline if a party is not permitted to park in a specific area

## **School Activities**

*Detail any of the following:*

- Removal from school activities
- Restrictions related to participation in school activities
- Excuse from participation in school-required/course-required activities

## **School Events**

*Detail any of the following:*

- Prohibition from attending school events
- Restricted times that a party can attend school events
- Limitations related to school events (e.g., attending specific attending specific concerts, lectures)

## **School Employment**

*Detail any of the following:*

- Hours of work
- Restricted hours related to work
- Reassignment to another work area

## **Traveling to/from Campus**

*Detail any of the following:*

- Use of college transportation
- Restrictions from use of college transportation

**Escort Services**

*Detail any of the following:*

- Who is providing the escort services
- The days/times the escort services are available/required
- How a party can contact escort services when needed
- Limitations when escort is not available (days, hours)

**Increased Security**

*Detail any increased security methods, such as:*

- Additional security staff in designated locations

**Monitoring Specific Areas**

*Detail any of the following:*

- What monitoring is provided
- When monitoring is available or not available
- How to contact monitor provider

**Additional Safety Measures Adopted**

- Detail other safety measures for the parties

Notice of any violations of the Safety Measures should be reported immediately to **[INSERT: contact person's name, email address, and phone number]**. The violating party will be subject to disciplinary action.

Retaliation is prohibited under the policies of the College. Students are cautioned against engaging in behavior that may be considered retaliation for the reporting of a complaint and/or participation in the Title IX investigation. Retaliation includes any negative behavior directed at the individuals who brought this complaint and/or participated in the investigation.

By your signature below, you acknowledge that you have been notified and have received a copy of the Safety Measures.

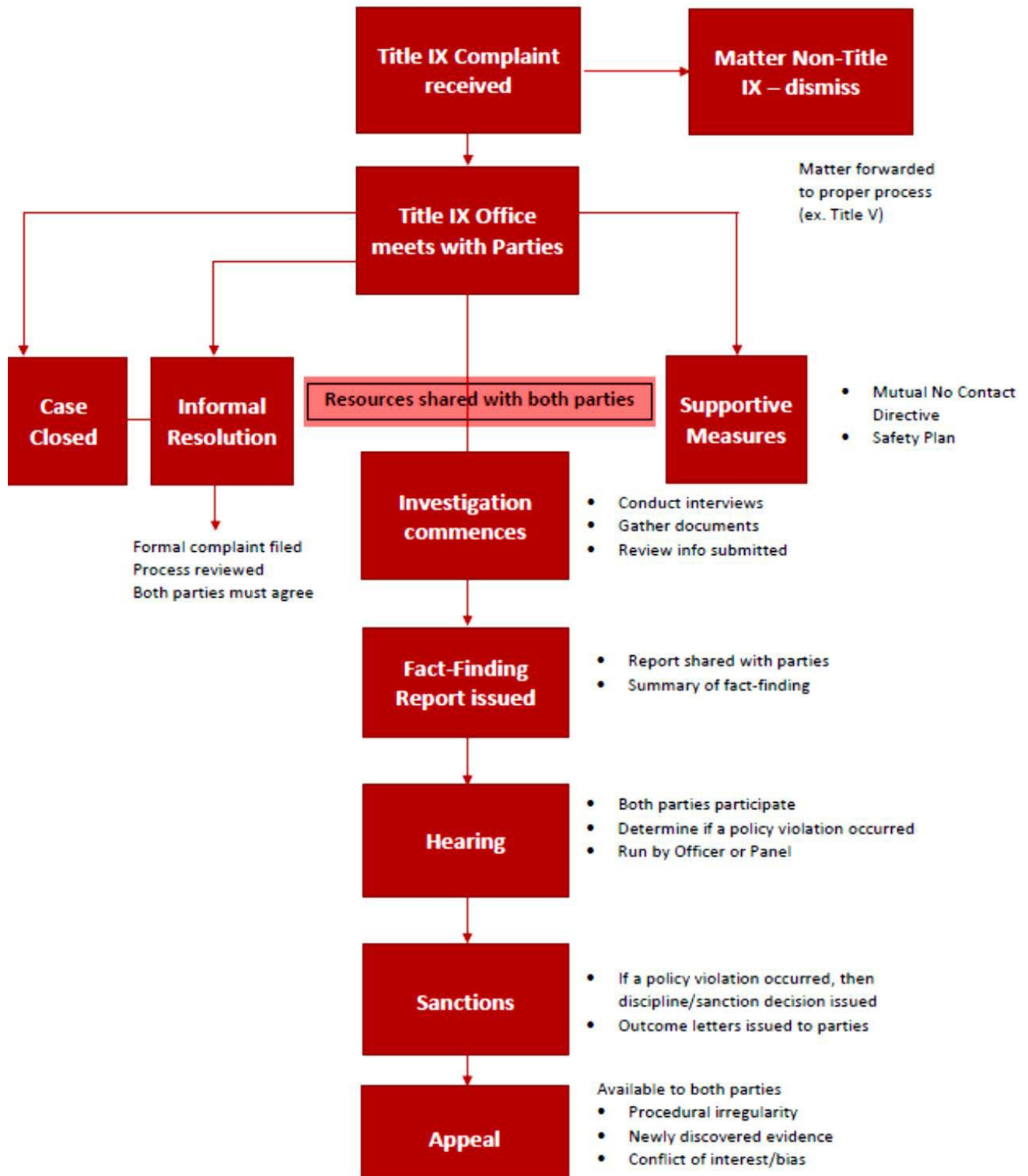
ACKNOWLEDGEMENT OF RECEIPT

\_\_\_\_\_  
Student Name (Printed)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Student Signature

Title IX Formal Process Flow Chart for Parties



# TITLE IX RESOURCES FOR PARTIES

**Introduction:** The College should develop a packet of resources available for each party to a Title IX complaint/investigation. Below is an outline of what should be in each packet.

## A. COMPLAINANT RESOURCE PACKET

### 1. Policy and Procedure

- a. Copy and/or link to college polices and administrative regulations on Title IX matters

### 2. On-Site Support

- a. Contact information for the Title IX Office: Personnel, office address, phone number, and email address
- b. Process Contacts: Any designated employee who can assist a party with process (Complainant Advocate/Advisor)
- c. Confidential Resources: Mental health professionals or other designated campus confidential resources

### 3. Off-Site Resources

- a. Local resources for victims of violence with contact information
- b. Local hospital that has a Sexual Assault Nurse Examiner (SANE) Nursing Staff and provides access to rape kit
- c. Police Contacts: Local police with information on how to file a criminal complaint or seek a restraining order
- d. Child Protective Services (CPS): Mandatory reporting depending on age of students

### 4. Preservation of Evidence

- a. In the event that an investigation commences, maintain all evidence that could be useful, including phone calls, texts, emails, instant messages, and other types of communications. Take steps to secure this information.
- b. Seek medical attention immediately. Some concerns to consider:
  - i. If you are seeking a rape kit, do not shower, bathe, or douche. Do Not change, destroy, or dispose of clothes. You may have evidence that can be collected up to 72 hours after the encounter.
  - ii. Do not touch, move, or wash anything where the assault occurred, as you may inadvertently destroy evidence.
  - iii. Evidence could exist in your system if you feel that you were drugged.

## B. RESPONDENT RESOURCE PACKET

Although not specifically required, the College should consider a packet for the Respondent to ensure both parties are treated fairly.

### 1. Policy and Procedure

- a. Copy and/or link to college polices and administrative regulations on Title IX matters

### 2. On-Site Support

- a. Contact information for Title IX Office: Personnel, office address, phone number, and email address
- b. Process Contacts: Any designated employee who can assist a party with process (Respondent Advocate/Advisor)

- c. Confidential Resources: Mental health professionals or other designated campus confidential resources

**3. Off-Site Resources**

- a. Local resources for mental health counseling
- b. Police Contacts: Local police for potential follow-up or information about restraining orders

**4. Preservation of Evidence**

- a. In the event that an investigation commences, maintain all evidence that could be useful, including phone calls, texts, emails, instant messages, and other types of communications. Take steps to secure this information.
- b. Seek medical attention immediately, if needed.



# Adopting A Hearing Panel



# ADOPTING A HEARING PANEL ADJUDICATION PROCESS FOR STUDENT TITLE IX MATTERS SWACC GUIDANCE DOCUMENTS (JULY 27, 2020)

## INITIAL CONSIDERATIONS

Colleges and universities throughout the country are required to adopt hearing panel adjudication of Title IX matters based upon recent judicial and regulatory guidance. In California, Appellate level guidance has recently rejected the single-investigator model. Also, the Final Rules under Title IX require hearing panels for all Title IX matters.

Briefly, the California judicial and proposed federal regulatory guidance are as follows:

## CALIFORNIA APPELLATE DECISION<sup>1</sup>

The Appellate Court in California held that for reasons of “fundamental fairness” in matters where a student faces a severe penalty and the decision turns on witness credibility, the decision-maker must have the opportunity to assess the credibility of critical witnesses. Assessing credibility includes permitting the decision-makers to cross-examine the parties and key witnesses.

Further, the case criticized the use of one individual to serve as investigator, prosecutor, fact-finder, and sentencer. The decision reflects OCR guidance of 2017<sup>2</sup> that sought to separate the decision-makers related to fact-finding and policy violation. Thus, the policies should identify distinct decision-makers for:

- Fact-Finding
- Policy Violation
- Sanctions of Respondent (if necessary)<sup>3</sup>

<sup>1</sup> Doe v. University of Southern California, 30 Cal.Rpt. 5<sup>th</sup> 1036 (Ct. App. 2019)

<sup>2</sup> OCR Q&A on Sexual Misconduct Letter, September 2017, <https://www2.ed.gov/about/offices/list/ocr/docs/qa-title-ix-201709.pdf>

<sup>3</sup> In the 2017 guidance, the policy violation and sanctioning decision can be made by the same person. However, under Doe, these individual decisions should be made by separate people.

## DEPARTMENT OF EDUCATION REGULATIONS

Effective August 14, 2020, the Department of Education adopted New Rules under Title IX.<sup>4</sup> Under these regulations, Colleges and universities are required to use of a hearing officer or panel for Title IX matters and allow for cross-examination by the parties and/or their representatives.

In order to assist with the adoption of a hearing officer or panel process, the following steps are suggested.<sup>5</sup>

### PROCESS 1 – REVIEW CURRENT POLICIES TO DETERMINE CURRENT PROCESS AND REMOVE LANGUAGE CONTRARY TO GUIDANCE

- Review any and all policies/administrative regulations related to Title IX, including the following:
  - BP/AR 3410, 3430, 3435, 3540, 5500, 5520, 5530, 5540, and any other policy addressing protected-class prohibitions on discrimination/harassment, Title IX, sexual misconduct.
  - Remove language related to process inconsistent with the hearing panel procedure (i.e., single investigator models).

### PROCESS 2 – REVIEW DECISION-MAKING POINTS TO DEVELOP A PROPER HEARING PANEL MODEL FOR COLLEGE

#### DECISION 1

- Identify who will take active roles in the process.

Suggestions:

1. Title IX Office gathers facts.
2. Hearing officer/panel makes decision about policy violation.
3. Student Conduct makes decision about sanction if policy violation is found.

[Prior Decision 2 was removed, as hearings are now required]

#### DECISION 2

- Set forth the paperwork/documentation requirements, who is responsible for developing and/or sharing this information internally and externally, and what will be shared throughout and at the conclusion of the process.

Suggestions:

1. Issue a notice of allegations through the Title IX Office.
2. Collect Title IX documents on fact-finding process through the Title IX Office.
3. Share all information with the parties prior to the hearing through the Title IX Office and/or provide an opportunity to the parties to inspect the fact-finding file before the hearing.
4. Determine who will send notification to all parties and witnesses for hearing.
5. Collect and distribute the findings of the hearing panel/officer.

<sup>4</sup> <https://www2.ed.gov/about/offices/list/ocr/docs/titleix-regs-unofficial.pdf>

<sup>5</sup> This guidance assumes all current policies have been revised since OCR issued its guidance in 2017 and retracted guidance from 2011 and 2014.



6. At conclusion, issue outcome letters to the parties detailing the appropriate findings from the hearing officer/panel and provide information on how to file an appeal.

### DECISION 3

- Describe the role of the hearing officer or hearing panel – members, roles, decision-making authority, examination/cross-examination of witnesses, training, and any other important details about how the panels will be run.<sup>6</sup>

#### Suggestions:

1. Identify the process for finding potential officer/panel members and gather a list of participants.
2. For a hearing officer, this individual will manage the hearing.
3. For a hearing panel, select an odd number of hearing panel members so a majority makes decisions. Identify one chair of the panel for administration purposes to manage and make the final decision on how hearing will run.
4. Provide annual training to officers/panel members and consider just-in-time training before the actual hearing on process and topics such as trauma-informed methods, cultural sensitivity, avoiding bias and stereotypes, and include information about this training in the policy.

### DECISION 4

- Address how the hearing will be managed.

#### Suggestions:

1. Identify who will be in the room – the parties and advisors, officer/panel members, note-takers, etc.
2. Determine if teleconference will be used to separate the parties and/or witnesses.
3. Officer/chair will manage the hearing process and maintain discretion for how to manage – deciding the witnesses, running hearing, concluding the hearing, issuing the decision, and memorializing the decision.
4. Advisors are permitted to ask questions of parties.
5. For parties or witnesses who choose not to attend hearing, prior testimony will be excluded.
6. Identify which types of questions will not be asked, provide reasoning, and ensure proper documentation of decision-making process.
7. Identify what decision will be issued from officer or panel (i.e., policy violation) and which burden of proof will be used (preponderance of the evidence).
8. Recordings of the hearing are required.

### DECISION 5

- Determine who will make the sanctioning decision, if necessary.

#### Suggestion:

Student Conduct/Affairs handles discipline decision.

### DECISION 6

- Review the appeal process.
- Appeal permitted for both parties on the following basis:

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<sup>6</sup> Please note that because of the sensitive nature of Title IX matters, most schools do not allow students to serve on these hearing panels. Review the members of any standing hearing panels (i.e., for Student Code violations) to determine if the members are appropriate for these types of matters.

- Procedural irregularity that affected the outcome of the matter;
- Newly discovered evidence that could affect the outcome;
- Title IX personnel had a conflict of interest or bias that affected the outcome.
- Colleges may consider other appeal basis.

**Suggestion:**

In light of changes to hearing panel process, determine if the appeal process is consistent with recently adopted processes and ensure it identifies a unique individual to review the appeal.

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# Hearing Process – Form Policy Language

○.....○

# HEARING PROCESS – FORM POLICY LANGUAGE

## WHEN TO USE

The Hearing Process shall be used in all Title IX matters. The Hearing Process shall be managed by the Title IX Coordinator.

## ADMINISTRATIVE ROLES IN PROCESS

### Title IX Office

The Title IX Coordinator or designee shall be responsible for managing the hearing process (issuing notice of allegations, notice of hearing officer/panel, etc.) and the necessary logistics (scheduling, notifying witnesses, providing the parties and hearing officer/panel with appropriate documentation and evidence, managing the appointment of an advisor [if necessary] coordinating videotaping/audiotaping, identifying the location of hearing, and any other support that is necessary for the hearing to run smoothly).

The Title IX Coordinator will designate a Title IX Investigator who is responsible for gathering the fact-finding information from the parties and witnesses and any documentary and/or electronic evidence. The Title IX Investigator will gather this information into a summary Fact Finding Report to be reviewed by the Title IX Coordinator. Parties to the matter will be given access to this Fact-Finding Report and any evidence relied upon in the Report. Parties will be given ten (10) days to review the Report and submit questions to the Title IX Investigator for incorporation into the Report. Then, the Title IX Investigator will submit the Fact-Finding Report to the Hearing Officer/Panel, after those individuals have been selected and the time for objection has expired. At the college's election, the Title IX Coordinator may assist the Title IX Investigator with the process of incorporating comments and sharing the report with the Hearing Officer/Panel. The Final Fact-Finding Report incorporating the input from both parties shall be completed within a reasonable amount of time after the Notice of Allegations and shall present facts only and will not address the policy and/or potential policy violations. *[Consider adding info about the specific contents of the report.]*

### Hearing Officer/Panel

The hearing itself will be conducted by a Hearing Officer/Panel which will be selected from an approved list of qualified candidates who have received the necessary training in Title IX, the college's internal process, the impact of trauma, avoiding bias and stereotypes, cultural sensitivity, and any other relevant topic. The Title IX Coordinator will select the Hearing Officer/Panel and will notify the parties of this selection within five (5) days of the date after the Final Fact-Finding Report is issued.

The Hearing Officer/Panel shall conduct the hearing independently, will have responsibility for ensuring the hearing is orderly and fair, and have broad authority to address any behavior which is disruptive to the hearing. The Hearing Officer/Panel will make all decisions about the admissibility of testimony during the process, using this policy to guide the process. At the end of the hearing, the Hearing Officer/Panel will make a determination as to whether the evidence supports or does not support a finding of a policy violation using a preponderance of the evidence standard. This Initial Hearing Report will be shared with both parties who will be permitted to respond. This final decision of the Hearing Officer/Panel will be issued in a Final Hearing Report.

**Sanctioning Body (Student Affairs)**

If a policy violation is found, the Title IX Coordinator will forward the Hearing Report to the body tasked with issuing discipline/sanctions. The sanctioning body will make the final decision about discipline taking into account all of the relevant factors in the matter and prior discipline decisions, if appropriate. Notice of Discipline/Sanction will be sent to Respondent by the Sanctioning Body.

**Selection and Notice of the Hearing Officer/Panel**

Title IX Coordinator will select the Hearing Officer/Panel and will advise the parties in writing of the officer/members and the date for the hearing within five (5) days of the Notice of Allegations. Within a reasonable period of time after the Notice of Allegations, the Title IX Coordinator will share the Fact-Finding Report.

**Objection to the Hearing Officer/Panel**

Both parties will be notified by the Title IX Coordinator of the selection of the Hearing Officer/Panel and given three (3) days to submit objections to the Title IX Coordinator. The objections must be based on an actual conflict of interest if the Hearing Officer/Panel has a personal relationship with the parties and/or witnesses and/or has demonstrated actual bias towards a party or witness. The Title IX Coordinator will evaluate whether the objection is substantiated, and if it is substantiated, a new Hearing Officer/Panel member will be replaced, as needed.

**Response to the Fact-Finding Report and Request for Witnesses at Hearing**

The parties are permitted to provide the Hearing Officer/Panel with a brief response to the Fact-Finding Report not to exceed five (5) pages (unless prior permission has been granted to exceed this limit). In addition, the parties must submit a list of witnesses that they would like called to the hearing within five (5) days of receipt of the Fact-Finding Report. Any response to the Fact-Finding Report and list of witnesses must be submitted to the Hearing Officer/Panel at least five (5) days prior to the hearing date. All witnesses provided in the list must have been part of the fact-finding by the Title IX Investigator.

Coordination of witnesses including notice of hearing date and time will be managed by the Title IX Office.

If the responses to the parties indicates a fatal defect in the Fact-Finding Report, the Hearing Officer/Panel shall consult with the Title IX Coordinator to determine if additional fact-finding is necessary before the hearing. The Title IX Coordinator in his/her sole discretion shall decide whether additional fact finding is necessary or whether to proceed to hearing without additional fact-finding.

**Pre-Hearing Meeting**

The Hearing Officer/Panel shall make all final decisions about the hearing, including the order of the proposed hearing testimony. This information will be shared with the parties in separate pre-hearing meetings that will take place prior to the hearing. During the pre-hearing meeting, the parties can ask any questions that they have about the hearing process.

## Hearing Process

The hearing will be managed solely by the Hearing Officer/Panel. Complainant and Respondent and their respective advisors must be permitted to be present at all times during the hearing. When appropriate, the Hearing Officer/Panel in its sole discretion shall make arrangements for the parties to attend remotely or through video conferencing. Witnesses will only attend in order to provide testimony and will be dismissed after providing such testimony.

## Role of Advisors

The parties are entitled to have an advisor of choice support them, provide advice throughout the hearing process, and examine or cross-examine parties and/or witnesses during the hearing. Advisors are permitted to advise their party during the hearing and time will be given for the parties to confer with advisors during the process.

## Opening Statements *[OPTIONAL]*

The parties or advisors may provide an opening statement up to five (5) minutes in length at the start of the hearing, beginning with an opening statement from Complainant followed by an opening statement by Respondent. Both parties can waive giving an opening statement.

## Testimony and Cross-Examination

The Hearing Officer/Panel will commence the process and may begin by asking questions of the parties and witnesses during this stage of the process. The Title IX Investigator may be called to provide clarification to the Title IX Fact Finding Report if necessary and at the discretion of the Hearing Officer/Panel or request of either party. Examination of witnesses and cross-examination will be handled by the advisors for each party. If a party does not have his/her own advisor, the college will provide one to the party. The Hearing Officer/Panel may object to questions posed by an advisor if the Hearing Officer/Panel finds that such questions are irrelevant.

Formal rules of evidence for court proceedings do not apply to the hearing. For example, the Hearing Officer/Panel may consider hearsay or another type of evidence in the hearing, even though it may not be admissible in a civil/criminal trial. If new evidence has come to light since the Fact-Finding Report, the Hearing Officer/Panel will make the decision as to whether it will be considered in the hearing.

The college is responsible for making and maintaining an audio recordings of the hearing and/or a transcript of such hearing.

## Questioning

All questions must be submitted by the parties to be asked of other parties and/or witnesses by the advisors to the party. The following types of question will be excluded based upon the sole decision of the Hearing Officer/Panel:

- Questions about the Complainant's sexual history with anyone other than the Respondent (unless testimony goes to show the Respondent did not engage in the conduct or to prove consent);

- Questions about the Respondent's prior sexual history with anyone other than the Complainant (unless such testimony is used to prove motive and/or pattern of conduct); and/or
- Questions that are irrelevant, harassing, duplicative, or intrude upon the privacy of a party or witness.

### **Closing Statement [OPTIONAL]**

In its discretion, the Hearing Officer/Panel shall allow the parties or advisors to make brief closing remarks not to exceed five (5) minutes, beginning with a closing statement by the Respondent followed by a closing statement by the Complainant.

### **Expectations of Parties and Witnesses**

The parties and witnesses are expected to participate fully and truthfully in the hearing. A party's decision to not participate in the process will not stop the process from moving forward. The hearing will not be able to rely upon the information collected by the Title IX Office and other parties/witnesses if the party and/or witness does not participate in the hearing. However, the Hearing Officer/Panel may also not making any negative inferences if a party chooses not to participate in the hearing.

### **Standard of Evidence**

A preponderance of the evidence standard will be used by the Hearing Officer/Panel in reaching its determination about whether a policy violation has occurred.

Review of Finding

### **NOTICE OF OUTCOME**

The Hearing Officer/Panel will consider all of the information provided and made available at the hearing, and, using a preponderance of the evidence standard, will issue a Final Report that contains the Hearing Officer/Panel's factual findings and whether a policy violation has occurred, including the rationale for reaching the policy violation outcome. This Final Report will be issued within fourteen (14) days of the hearing unless an extension has been granted and/or other extenuating circumstances exist.

The Final Report will be forwarded to the Title IX Coordinator for review to determine if the report complies with the requirements set forth in this policy and the policy at issue. The Title IX Coordinator will then share the Final Report with the parties.

### **APPEAL**

*[Review current appeal process to determine if changes need to be made to have a unique person reviewing appeals.]*

## **Reference Guide for Title IX Sexual Harassment Matter submitted prior to Adoption of Title IX Policy incorporating the New Regulations**

This Reference Guide outlines the steps that should be taken upon notice of a Title IX Sexual Harassment after the effective date of adoption of Title IX New Rules (August 14, 2020). This document should be used with the Interim Title IX Sexual Harassment Policy.

Report of allegations of sexual harassment to an official with authority at the college imputes actual knowledge on the college and requires the college to respond in line with the new Title IX regulations in a manner that is not deliberately indifferent.

### **Step 1 – Title IX Coordinator Initial Review**

Upon receipt of allegations of sexual harassment from student, employees, or an official with authority, the Title IX Coordinator should engage in an initial inquiry into whether this matter fits within Title IX.

Inquiry 1 – Does the allegation fit within one of the sexual harassment definitions:

- 1) Quid pro quo harassment – An employee of the college conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct
- 2) Hostile environment – Unwelcome conduct determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity
- 3) Sexual assault [including rape, fondling, statutory rape], domestic violence, dating violence, or stalking, as defined in the Clery Act and/or local state law

Inquiry 2 – Did the actions take place at a covered location at the college, which includes locations, events, or circumstances (operations) where college:

- 1) exercised substantial control over the respondent, and
- 2) the context in which the sexual harassment occurs

After the initial review, if both inquiries result in “yes” responses, the matter on its face is Title IX Sexual Harassment and must proceed under the process below and in the Interim Title IX Sexual Harassment Policy.

If the initial review yields a “no” to either inquiry, the matter is not Title IX Sexual Harassment and may can be dismissed under the new regulations. Depending on facts and other applicable policies, campus may dismiss under Title IX policy and direct the complaining party to another policy/process that may apply.



*Note that the allegations may not provide sufficient information to make this decision, and this review may take place after receipt of the formal complaint.*

### **Step 2 – Initiating the Title IX Sexual Harassment Process**

For complaints that fall under the new Title IX Sexual Harassment process, the college has an obligation to take the following steps immediately:

- 1) Offer of formal process to complainant (go to Step 3 if college has not adopted new Title IX Sexual Harassment policy and Interim Title IX Sexual Harassment Policy will be used for process)
- 2) Offer of supportive measures to complainant (if college has adopted new Title IX Sexual Harassment policy, follow new policy and see Step 4 below)

### **Step 3 – Proceeding with a Compliant Title IX Process** (in absence of a new policy)

Although the college has not yet adopted a new policy, it is obligated to comply with the new regulations. Below are suggestions on how to make your process compliant:

- 1) Select the college process participants
  - a. Title IX Coordinator – what role will be played (administrator, investigator)
  - b. *Investigator*
  - c. Informal Process Facilitator
  - d. Potential Advisors for Parties
  - e. *Decision-maker – Hearing Panel Officer/Panelists*
  - f. *Appeal*

*Note: Italicized categories must be SEPARATE and DISTINCT individuals/group as set forth in the new regulations. Also, Title IX Coordinator may NOT be decision-maker. All participants in the process must have received adequate training in Title IX and the applicable process before undertaking a role in a Title IX process.*

- 2) Advise the Complainant of the new Title IX process
  - a. Formal communication to Complainant should outline that the Title IX process has been changed in order to be compliant with Title IX law
  - b. Outline of a compliant Title IX process in the communication and/or include a copy of the Interim Title IX Sexual Harassment Policy (if adopted)

### **Step 4 – Offer of Formal Process and Supportive Measures to Complainant**

- 1) In a formal communication, Complainant must be offered the formal complaint process and information on how to file the formal complaint.
- 2) Complainant should be offered supportive measures immediately. The purpose of the supportive measures is to restore or preserve equal access and protect

safety while also to deter sexual harassment. The measures must be non-disciplinary and non-punitive.

### **Step 5 – Determine if Removal of Respondent is Warranted based on Allegations**

A Respondent may be removed from the college before the initiation and conclusion of a Title IX investigation on an emergency basis and under limited circumstances. In order to initiate a removal, the college is obligated to engage in an individualized safety and risk analysis of Respondent.

- 1) If the Respondent poses an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment, then the college can may remove the Respondent.
- 2) Respondent must be given notice of this removal and the opportunity to challenge the decision immediately.
- 3) For a non-student respondent (i.e., employee), the college has broad discretion to place the respondent on administrative leave pending the outcome of the grievance process.

### **Step 6 – Formal Complaint**

- 1) Received from Complainant- Upon receipt of the complaint, the Title IX Coordinator should undertake another inquiry into whether the incident fits within the definition of sexual harassment and the jurisdiction of Title IX (see Step 1Inquiries).
- 2) If a formal complaint has not been filed, Title IX Coordinator must evaluate whether to file a formal complaint.
  - a. The Title IX Coordinator should consider the following factors when determining whether to exercise discretion to sign a formal complaint on behalf of the college: allegations of violence, threats, use of weapons, and serial predation.
  - b. Title IX Coordinator decides to initiate when it is clearly not unreasonable in light of the known circumstances.

### **Step 7 – Dismissal of Action**

Under New Rules, certain matters must be dismissed while in other matters, the college has the discretion of whether to dismiss or not.

- 1) College must dismiss if:
  - The matter on its face would not constitute sexual harassment as defined in regulations;
  - The matter did not occur in education program or activity; or
  - The matter did not occur in the United States.

- 2) College may dismiss if:
  - Complainant withdraws the formal complainant in writing;
  - Respondent is no longer enrolled or employed by district; or
  - Specific circumstances prevent the school district from gathering evidence sufficient to reach a determination (should set forth in detail for file documentation)
- 3) Written notice to parties about a dismissal by the college must be submitted simultaneously to both parties.
- 4) If another college process may apply to the situation, the dismissal notice may refer parties to the alternative process.

**Step 8 - Notice of Allegations**

- 1) Notice of the allegations must be given to the Responding party and provide description of allegations with specific detail.
- 2) Supportive measures should be offered to Respondent.
- 3) Notices of all meetings and interviews must be given to both parties.

**Step 9 - Offer Parties Informal Resolution Process (if one exists)**

- 1) Describe informal resolution process to both parties.
- 2) Both parties must agree to informal resolution process.
- 3) Continued enrollment or employment at the college cannot be dependent upon an agreement to utilize the informal process.
- 4) Parties may return to the formal process any time prior to reaching a final resolution in the informal process.

**Step 10 - Initiate Investigation**

- 1) Title IX investigator gathers relevant information.
- 2) Title IX investigator MAY be the Title IX Coordinator.

**Step 9 – Review of Investigatory Materials**

Parties are given 10 days to review and respond to all investigatory materials.

**Step 10 – Final Investigation Report Prepared**

- 1) Weighs and summarizes relevant evidence
- 2) Includes comments/concerns raised by the parties during the review period
- 3) May include recommended finding(s)
- 4) Report submitted to the decision-maker

**Step 11 – Hearing**

Review the Interim Title IX Sexual Harassment Policy for details of how to conduct the hearing.

**Step 12 – Decision-Maker Issues Finding**

Decision-maker issues a finding regarding whether the policy has been violated.

**Step 13 – Sanction Process**

If a policy violation is found, the designated individual (not Title IX Investigator Title IX Coordinator if Coordinator served as Investigator) makes the decision regarding sanctions.

**Step 14 – Appeal Process**

Both parties are entitled to an appeal on the following grounds:

- 1) Procedural irregularity that affected the outcome of the matter
- 2) Newly discovered evidence that could affect the outcome
- 3) Title IX personnel had a conflict of interest or bias that affected the outcome

**SWACC  
DRAFT INTERIM TITLE IX SEXUAL HARASSMENT POLICY<sup>1</sup>  
effective [insert date]**

**PURPOSE:** This policy applies to allegations of Title IX Sexual Harassment (defined below), that occur while in a *college's program or activity* (defined below) for which the college has *actual knowledge* (defined below). This policy applies to both students and employees of the college. It is the policy of the college to prohibit the Title IX Sexual Harassment of its students and staff by other students or staff while in a college's program or activity.

It is the policy of the college to provide its students and employees with an educational and employment environment free of Title IX Sexual Harassment. This policy addresses interactions between students, faculty, and staff members. Because of the seriousness of these matters, the college will make every effort to assure that Title IX Sexual Harassment does not occur and will take disciplinary actions which may include dismissal or expulsion for policy violation.

At all times, the responsibility for gathering facts and engaging in an investigation is an obligation of the college.

*[NOTE TO COLLEGE ADMINISTRATION: The college is required to set reasonably prompt time frames for concluding the formal complaint grievance process, and also to set a reasonably prompt time frame for concluding an appeal and, where applicable, informal resolution options.]*

**NOTICE OF TITLE IX SEXUAL HARASSMENT**

Actual knowledge means notice of Title IX Sexual Harassment or allegations of sexual harassment that are made to the college's Title IX Coordinator or any official of the college who has the authority to institute corrective measures on behalf of the college.

**TITLE IX COORDINATOR**

The Title IX Coordinator can be reached at:  
[INSERT ALL TITLE IX COORDINATOR INFORMATION]  
Name  
Address and Location of Title IX Office

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<sup>1</sup> This draft policy is provided exclusively to SWACC members as a guideline for creating an interim policy consistent with the 2020 Final Title IX Regulations. This policy should be reviewed with administration and counsel before it is finalized. This policy cannot be shared outside of the SWACC membership group.

Email Address  
Telephone Number

#### PARTIES

For the purposes of this policy, the following definitions of the two parties apply:

“Complainant” is an individual who is alleged to be the victim of conduct that could constitute sexual harassment, irrespective of whether a formal complaint has been filed;

NOTE: Where the Title IX coordinator files the complaint, the reported victim remains the complainant and must be treated as a party, including receiving all required communications and opportunities to participate in the investigation and adjudication.

“Respondent” is an “individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

#### TITLE IX SEXUAL HARASSMENT

For purposes of this policy, Title IX Sexual Harassment is defined as unwelcome behavior of a sexual nature that fits within **one** of the following categories:

- 1) Quid Pro Quo harassment - An employee of the college conditioning the provision of an aid, benefit, or service of the college on an individual's participation in unwelcome sexual conduct;
- 2) Hostile Environment Harassment - unwelcome conduct that a reasonable person would determine is so severe, pervasive and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity;
- 3) Sexual assault (inclusive of sexual assault, rape, sexual fondling), domestic violence, dating violence, and/or stalking, as defined by the Clery Act and the Violence Against Women Act (VAWA).

#### COLLEGE PROGRAM OR ACTIVITY

In order to be covered under this policy, the behavior must have occurred on campus or within a program or activity of the college, and have occurred in the United States.

The term “education program or activity” includes locations, events, or circumstances over which the college exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.

A student using a personal device to perpetrate online sexual harassment during class time may constitute a circumstance over which the recipient exercises substantial control.

## COMPLAINT PROCEDURES

Upon notice of allegations of Title IX Sexual Harassment, the college must offer a Complainant the formal process set forth in this policy and direction on how to file a formal complaint before it can proceed with an investigation. The college must also offer Complainant supportive measures upon notice of Title IX Sexual Harassment.

## FILING A FORMAL COMPLAINT

A formal complaint is a document filed by a Complainant and signed by Complainant alleging Title IX Sexual Harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment. The formal complaint can be provided in writing by person, by email, by telephone, or in person to the Title IX Coordinator at the college. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed.

If Complainant fails to file a formal complaint, the Title IX Coordinator may file and sign a formal Title IX complaint alleging Title IX Sexual Harassment against Respondent and requesting an investigation.

## SUPPORTIVE MEASURES

The college must offer Complainant supportive measures as appropriate, as reasonably available, and without fee or charge upon notice of allegations of Title IX Sexual Harassment. Supportive measures are individualized services that are non-punitive, non-disciplinary, do not unreasonably burden the other party, and are designed to restore or preserve a person's equal access to education. Supportive measures include services such as counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. Supportive measures are available to Complainant regardless of whether Complainant files a formal complaint. As much as possible, the supportive measures should be kept confidential.

## ADVISORS

Both parties are entitled to an advisor of their choice. This advisor may be an attorney. The advisor serves to support their party. The advisor also plays a role in the hearing and is permitted to cross-examine the other party and witnesses during the hearing. If one party has not found an advisor, the college must appoint one to assist the party with the hearing process.

## EMERGENCY REMOVAL

Where Respondent poses an immediate threat to the physical health or safety of the Complainant or anyone else, an emergency removal is possible prior to the conclusion of a grievance process or while a grievance is pending.

In order to initiate removal proceedings, there must be an emergency situation arising from the alleged conduct that could constitute sexual harassment. The college must conduct a prompt individualized safety and risk analysis to determine if Respondent is an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment. If Respondent is found to be an immediate threat, a removal is possible. Respondent must be given notice and an immediate opportunity to challenge the emergency removal.

The process for putting a non-student employee-respondent on administrative leave can only begin after a formal complaint has been filed against the respondent.

## DISMISSAL OF COMPLAINT

If the conduct alleged in the formal complaint would not constitute Title IX Sexual Harassment as defined in this policy, even if proved, the college can dismiss this matter after the complaint is submitted and before an investigation is undertaken.

Specifically, a college **must** dismiss a formal complaint of sexual harassment in three specific circumstances:

1. The alleged conduct would not constitute sexual harassment as defined under this policy even if proved; or
2. The alleged conduct did not occur in the recipient's education program or activity; or
3. The alleged conduct did not occur against a person in the United States.

A college **may** dismiss the formal complaint or any allegations therein if at any time during the investigation or hearing:

1. A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein; or
2. The respondent is no longer enrolled or employed by the college; or
3. Specific circumstances prevent the college from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

If a formal complaint is dismissed, an appeal of a dismissal is permitted under appeal requirements below.



## NOTICE OF ALLEGATIONS

The college must provide Complainant and Respondent with a notice of allegations after a formal complaint is submitted (and has not been dismissed) with sufficient details known at the time. 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 must 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 must inform the parties that they may have an advisor of their choice who may be, but is not required to be, an attorney. The written notice must inform the parties of any provision in the recipient's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

Note that the college has the right to consolidate matters of a similar nature (i.e. multiple allegations against respondent, cross-complaints) for investigation purposes.

## INFORMAL RESOLUTION

A college may offer the parties the option to utilize an informal resolution process after a formal complaint has been submitted by Complainant and notice of allegations have been sent to the parties. The college may not require participation in an informal resolution process as a condition of enrollment or continuing enrollment. The college must provide the parties with a full description of the informal resolution process and receive voluntary, written consent by both parties to the informal resolution process. If Respondent is an employee alleged to have engaged in Title IX Sexual Harassment against a Complainant-student, informal resolution is never an option.

## STANDARD OF EVIDENCE

The standard of evidence that will be used by the investigator and the decision-maker in this policy is a preponderance of the evidence.

## INVESTIGATION

The college will name an investigator who will gather evidence and engage in an objective evaluation of all relevant evidence – including both inculpatory and exculpatory evidence. Credibility determinations may not be based on a person's status as a complainant, respondent, or witness.

## REVIEW OF INVESTIGATION MATERIALS

After gathering all the investigation materials, the investigator must provide the parties with a copy of all the materials available, directly related to the allegations and give the parties ten (10) days to review the materials. The materials will include all information gathered, even if the final investigation report will not include such information. At the end of that ten (10) day

period, the parties have the right to submit a written response or additional information which the investigator will consider before completing their investigative report.

#### INVESTIGATION REPORT

The investigator will create an investigative report that fairly summarizes the relevant evidence. At least ten (10) days prior to a hearing or other time of determination regarding responsibility, the investigator will send each party and the party's advisor the investigative report in an electronic format or a hard copy for their review and written response.

#### HEARING

After reviewing the investigation report, the decision-maker will hold a live hearing. Parties will be permitted to be present at the hearing and, through their advisor, engage in cross-examination of the other party and witnesses. Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally. Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not being relevant. The decision-maker(s) may require that questions be submitted in advance from the parties.

If a party does not have an advisor present at the live hearing, the recipient must provide, without fee or charge to that party, an advisor of the recipient's choice who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party. If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility.

If a party or witness does not attend the meeting and/or does not submit to cross-examination, any testimony given by that party or witness cannot be considered by the decision-maker. However, the failure to attend the hearing cannot be viewed negatively by the decision-maker.

Live hearings pursuant to this paragraph may be conducted with all parties physically present in the same geographic location or, at the recipient's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.

At the request of either party, the recipient must provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party or the witness answering questions.

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Recipients must create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review.

#### RAPE SHIELD PROTECTION

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant and thus not permitted, unless 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 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.

#### DECISION MAKER CONCLUSION

The decision-maker's conclusion must adequately cover the findings for the purpose of an appeal or judicial proceeding to review the determination regarding responsibility. This conclusion must include:

1. Identification of the allegations potentially constituting Title IX Sexual Harassment;
2. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
3. The findings of fact supporting the determination;
4. The conclusions regarding the application of the recipient's code of conduct to the facts;
5. A statement of and rationale for the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the recipient imposes on the respondent, and whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the recipient to the complainant; and
6. The recipient's procedures and permissible bases for the complainant and respondent to appeal.

#### CONSENT

As a higher education institution in California, SB 967 (Affirmative Consent law) will be used in evaluating consent with regard to sexual assault allegations.

#### APPEALS

After a decision-maker issues the decision, both parties must be offered a process to appeal a determination regarding responsibility and/or a college's dismissal of a formal complaint on the following bases:

- (1) Procedural irregularity that affected the outcome of the matter;
- (2) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and

(3) The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

#### PROHIBITION AGAINST RETALIATION

This policy prohibits the college or other person from intimidating, threatening, coercing, or discriminating against any 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, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy. This policy protects any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of Title IX Sexual Harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, any witness, and any other individual who participates or refuses to participate in an investigation, proceeding, or hearing related to the Title IX regulations.

#### RECORD-KEEPING

Records related to Title IX Sexual Harassment should be maintained for seven (7) years, including records of:

- (1) any sexual harassment investigation, including any responsibility determination, and any required recording or transcript, as well as any sanctions imposed on the respondent, and any remedies provided to the complainant;
- (2) Any appeal and its result;
- (3) Any informal resolution and its results; and
- (4) All materials used to train investigators, decision-makers, and Title IX coordinators with regard to sexual harassment.