

Title IX Sexual Harassment: Greivance Procedure

2020

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Training Goals

Understand

Understand sexual harassment as defined by our Interim Title IX Sexual Harassment Policy and Grievance Procedure, along with key provisions of the grievance procedure

Understand

Understand the scope of the College's education programs and activities

Understand

Understand how to conduct an investigation under the grievance procedure

Understand

Understand how to serve impartially, including the provisions of a fair grievance process for all that is free of bias

**Title IX
Sexual Harassment
Defined**



**Quid Pro
Quo Sexual
Harassment**

**Hostile
Environment**

**Sexual
Assault**

**Dating
Violence**

**Domestic
Violence**

Stalking



Title IX Sexual Harassment

QUID PRO QUO SEXUAL 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

EXAMPLES

- Professor conditions internship placement on the student's agreement to date the professor.
- Supervisor conditions promotion on subordinate employee's agreement to engage in sex act with supervisor.

Title IX Sexual Harassment

HOSTILE ENVIRONMENT

- Unwelcome conduct based on sex determined by a reasonable person to **be so severe, pervasive, and objectionably offensive** that it effectively denies equal access to the College's education programs or activities

EXAMPLES

- Sexual oriented jokes are told regularly during the mandatory staff meeting. Employee quits attending the meetings because of the jokes and is subsequently disciplined for lack of attendance.
- Regularly, the professor stares at the intimate body parts of students in the professor's class and makes comments about the students' appearance, rating them from 1-10. A student in the class drops it and changes their major as this class is a required course.

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Title IX Sexual Harassment

SEXUAL ASSAULT

- Any sexual act directed against another person without consent of the victim, including instances where the victim is incapable of giving consent.

SEXUAL ASSAULT EXAMPLES

- Rape
- Sodomy
- Sexual assault with an object
- Fondling
- Statutory Rape
- Incest

Title IX Sexual Harassment: Sexual Assault

RAPE

- The carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity. There is carnal knowledge if there is the slightest penetration of the sexual organ of the female (vagina) by the sexual organ of the male (penis).



Title IX Sexual Harassment: Sexual Assault

SODOMY

- Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

Title IX Sexual Harassment: Sexual Assault

SEXUAL ASSAULT WITH AN OBJECT

- Use of an object or instrument to penetrate, however slight, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity. Object or instrument shall mean anything used by the offender other than the offender's genitalia.

Title IX Sexual Harassment: Sexual Assault

FONDLING

- The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the alleged victim, including instances where the alleged victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.

Title IX Sexual Harassment: Sexual Assault

STATUTORY RAPE

- **Non-forcible sexual intercourse with a person who is under the statutory age of consent in South Carolina**
- **Age of consent in South Carolina is 16**
- **Romeo and Juliet law in South Carolina applies to someone 14-16 and partner under 18**

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Title IX Sexual Harassment: Sexual Assault

INCEST

- **Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law in South Carolina.**

Title IX Sexual Harassment: Domestic Violence

DOMESTIC VIOLENCE

- Includes felony or misdemeanor crimes of violence committed by a:
 - current or former spouse of the complainant;
 - by a person with whom the complainant shares a child in common;
 - by a person who is cohabitating with or has cohabitated with the complainant as a spouse;
 - by a person similarly situated to a spouse of the complainant under the domestic or family violence laws of South Carolina;
 - or by any other person against an adult or youth complainant who is protected from that person's acts under the domestic or family violence laws of South Carolina

Title IX Sexual Harassment: Dating Violence

DATING VIOLENCE

- **Violence committed by someone:**
 - Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
 - Where the existence of such a relationship shall be determined based on a consideration of the following factors (length of the relationship, type of the relationship, and frequency of interaction between the persons involved in the relationship).



**Title IX
Sexual Harassment
Grievance
Procedure
Overview**

Jurisdiction

Applicability

Supportive
Measures

Confidential
Resources

Grievance
Procedure

Conflict of
Interest or
Bias

Standard of
Evidence

Sanctions

Remedies

Privacy &
Confidentiality

Retaliation

Informal
Resolution

Investigation

Hearing

Appeals

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Jurisdiction

- Alleged policy violation must be against a person in the United States
- In a education program or activity of the College

Jurisdiction

EDUCATION PROGRAM OR ACTIVITY

- Includes locations, events, or circumstances over which ***the College exercises substantial control over both the respondent and the context in which the sexual harassment occurs.***
- Education program or activity includes any building owned or controlled by a student organization that is officially recognized by the College as well as College owned or controlled property.

EXAMPLES

- **Residence halls** (e.g., Berry Hall, Buist Rivers, College Lodge, Craig Hall, George Street Apartments, Kelly House, Liberty, McAlister Hall, McConnell Hall, Rutledge Rivers, Warren Place, etc.)
- **Administrative buildings** (e.g., Randolph Hall, Robert Scott Small, Maybank, Stern, Lightsey, Bell, etc.)
- Computer and internet networks, computer hardware or software, and digital platforms that are owned or operated or used in the operation of the College.



Applicability

TITLE IX SEXUAL HARASSMENT POLICY

- Applies to all students, faculty, staff and others participating or seeking to participate in a College program or activity (e.g., applicants for employment or admission)
- The prohibition of Title IX sexual harassment shall also apply to contractors, vendors, visitors, guests or other third parties.



Supportive Measures

SUPPORTIVE MEASURES

- Non-disciplinary, non-punitive individualized services provided to parties
- Provided without fee or charge
- Designed to restore or preserve equal access to the College's education program or activity without unreasonably burdening the other party
- Supportive measures can be provided absent a formal complaint

EXAMPLES

- Mutual no-contact directives
- Academic or work adjustments
- Campus housing adjustments
- Public Safety campus escorts

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Confidential Resources

CONFIDENTIAL RESOURCES

- Confidential resources for those individuals who wish to discuss a situation in strict confidence without providing notice to the College are available.

CAMPUS CONFIDENTIAL RESOURCES

- Office of Victim Services
- The Counseling Center
- Student Health Services
- Deer Oaks Employee Assistance Program



Formal Grievance Process

EQUITABLE TREATMENT

- The parties must receive equitable treatment.
- Complainant(s) and respondent(s) must be offered supportive measures.
- Remedies will be provided to the complainant where a determination of responsibility for Title IX sexual harassment has been made against the respondent.

OBJECTIVE EVALUATION OF EVIDENCE

- Evidence must be evaluated objectively, including inculpatory (incriminating) and exculpatory (exonerating) evidence.
- Objective review requires assessing information without the impact of one's personal feelings, prejudices, or bias.



Formal Grievance Process

NO CONFLICT OF INTEREST OR BIAS

- Individuals serving as Title IX Coordinators, investigators, decision-maker(s), or any person facilitating an informal resolution must not have any conflict of interest or bias that precludes their ability to serve in those roles.
- Title IX Coordinators, investigators, decision-maker(s), or any person facilitating an informal resolution must not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.

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Standard of Evidence

PREPONDERANCE OF EVIDENCE

- **Violations of this policy will be determined based upon a preponderance of evidence.**
- **Preponderance of evidence is understood to mean concluding that a fact is more likely than not to be true.**
- **Where the evidence in a case is equal, i.e., 50% 50% between the parties, then the standard has not been satisfied.**



Sanctions

SANCTIONS

- A sanction proportionate to the severity of the violation will be issued when a decision maker determines that a respondent has violated this policy.
- Sanctions range from mandatory education to separation from the College.

EXAMPLES

- **Students:** expulsion, suspension, removal from campus housing, deferred suspension, mandatory referral to counseling, and disciplinary service
- **Employees:** termination, written reprimand, suspension



Remedies

REMEDIES GENERALLY

- Remedies are designed to restore or preserve equal access to the College's education program or activity.
- Remedies will be provided to a complainant where a determination of responsibility for Title IX sexual harassment has been made.
- Remedies that do not directly affect the respondent will not be disclosed to the respondent

EXAMPLES

- Permanent academic adjustments (e.g., ability to re-take a course without penalty, assistance with any scholarship related issues, etc.)
- Permanent work adjustments (e.g., re-assignment, promotion to another position, change in job duties or reporting structure, etc.)

Privacy and Confidentiality



The College does not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.



Where a party's conduct toward a witness might constitute "tampering" (i.e., attempting to alter or prevent a witness's testimony), such conduct is prohibited.



Information contained within the evidence review provisions afforded to the parties must not be inappropriately disclosed or disseminated by the parties.

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Privacy & Confidentiality

- Generally, information received during the grievance process must be kept private, to the extent reasonably possible and permitted under applicable law.
- This includes the identity of any person who has reported Title IX sexual harassment, or who has been reported to be a perpetrator of Title IX sexual harassment.

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Privacy & Confidentiality

- **Information may be disclosed, and includes, but is not limited to, the following:**
 - As permitted under the Family Educational Rights Privacy Act (FERPA),
 - If disclosure is required by other law or lawful process (e.g., subpoena or search warrant),
 - If disclosure is necessary to carry out the purposes of Title IX and its regulations, including to conduct a grievance process.



Retaliation

- Neither the College or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this Policy.
- A person may not be retaliated against because they have 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.
- The exercise of rights protected under the First Amendment does not constitute prohibited retaliation.

Informal Resolutions

Can only occur after a formal complaint has been filed with the College.

Parties both agree in writing. (not used for employee misconduct against a student)

Either party may withdraw from informal resolution process at any time prior to its completion and resume formal process.

To proceed with an informal resolution, the College will provide written notice to the parties about the following information:

- The allegations;
- The requirements of the informal resolution process; and
- Any consequences that may result from participating in the informal resolution process such as records that will be maintained or shared.



Investigation

- Investigations are conducted by personnel that have specialized training.
- Both parties have the opportunity to present inculpatory and exculpatory evidence and name witnesses, including fact and expert witnesses.
- Where evidence is duplicative of other evidence, the investigator may deem the evidence not relevant.
- The College does not compel participation or have subpoena power under this grievance process.
- All parties and witnesses must be truthful in information that they provide to the College. The failure to be truthful may constitute a separate violation of College policy.

Hearing

- Hearings are conducted live either in-person, telephonically, or via other means to reach a determination about responsibility.
- Either party may participate remotely, at their election.
- The hearing is recorded.
- The decision-maker(s) are not the same person as the Title IX Coordinator, Deputy Title IX Coordinators or investigators.
- Decision-maker(s) objectively evaluate all relevant evidence, both inculpatory and exculpatory, and reach a determination regarding responsibility.



Appeals

DISMISSAL OF FORMAL COMPLAINT

- A complainant or respondent may appeal the dismissal of a formal complaint, or allegations therein, within 10 business days of the date of the notice of the dismissal.
- Appeals must be submitted, in writing, to the Vice President of Human Resources.

DETERMINATION OF RESPONSIBILITY

- A complainant or respondent may appeal the written determination of responsibility within 10 business days from the date of the written determination of responsibility.
- Where the respondent's primary role with the College is a student, appeals must be submitted, in writing, to the Executive Vice President of Student Affairs.
- Where the respondent's primary role with the College is a faculty member, appeals shall be submitted to the Provost and Executive Vice President for Academic Affairs.
- Where the respondent's primary role with the College is a staff member or other administrator, appeals under this section shall be submitted to the Chief of Staff.

Grounds for Appeals

Procedural irregularity that affected the outcome of the matter;



New evidence not reasonably available at the time the determination was made, that could affect the outcome of the matter; or



The Title IX Coordinator, Deputy Title IX Coordinators, investigators 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.

Notice of Appeal

The parties will be notified, in writing, if an appeal is filed.



The non-appealing party has five business days from notification of the appeal to submit any response.



The parties will be provided with the appeal and any written response thereto.

Decision of Appeal

The appeal decision-maker(s) will be an official other than the decision-maker(s) that reached the decision being appealed.

The appeal decision-maker(s) will not be the investigator(s), Title IX Coordinator or Deputy Title IX Coordinators.

Within 15 business days of receipt of all documents from the parties the appeal decision-maker(s) will issue a final written decision which specifies the result of the appeal and rationale for the result.

This final determination will be simultaneously provided to the parties.



**Title IX
Sexual
Harassment
Investigations**

**Formal
Complaints**

**Consolidation
of Complaints**

**Dismissal of
Complaints**

Notice

**Presumption
of Innocence**

**Bias and
Conflict of
Interest**

**Burden of
Proof**

**Privileged
Information &
Records**

Advisors

**Invitation to
Interviews**

**Relevant and
Irrelevant
Questions**

**Review of
Evidence**

**Investigative
Report**

**Review of
Relevant
Evidence**

Timeframe

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Formal Complaints

COMPLAINTS SUBMITTED BY COMPLAINANTS

- **Complainants may submit the complaint by email, mail or in-person to EOP.**
- **At the time of filing a formal complaint, the complainant must be participating in or attempting to participate in an education program or activity of the College.**
- **Complaints must be signed and in writing.**



Formal Complaints

COMPLAINTS SUBMITTED BY TITLE IX COORDINATOR

- The Title IX Coordinator may submit a complaint alleging misconduct prohibited by this policy.
- The Title IX Coordinator may submit a complaint when a reporting party declines to do so, and will depend on factors such as:
 - the seriousness of the alleged conduct;
 - whether violence was threatened and/or weapons were used;
 - whether there have been other reports about the same individual;
 - the age of the victim;
 - the credibility of the information received; and
 - when the College has an outweighing interest, including protecting the rights and safety of others
- The Title IX Coordinator does not become the complainant or a party to the complaint.

Consolidation of Complaints

The Title IX Coordinator may consolidate formal complaints.

Consolidation may occur where:

- Alleged misconduct against one or more respondents filed by one or more complainants that arise out of the same facts or circumstances; and
- The allegations are so intertwined that the allegations directly relate to all the parties.

This also may include counter-complaints by one party against the other.

Dismissal of Complaints

MANDATORY DISMISSAL

- **Dismissal is required where:**
 - The conduct alleged in the formal complaint would not constitute Title IX sexual harassment;
 - Did not occur in the College's education program or activity, or
 - Did not occur against a person in the United States.
- This does not preclude the alleged misconduct from being addressed under another policy.

Dismissal of Complaints

DISCRETIONARY DISMISSAL

- **The College may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing:**
 - a complainant notifies the Title IX Coordinator, in writing, that the complainant would like to withdraw the formal complaint or any allegations therein;
 - the respondent is no longer enrolled or employed by the College;
 - or other specific circumstances prevent the College from gathering evidence sufficient to reach a determination as to the formal complaint or allegations contained in the complaint (i.e., where a complainant refuses to participate in the process, where the respondent is not under the authority of the College because the respondent is a non-student, non-employee, or other individual not affiliated with the College).

Notice of Dismissal of Formal Complaint

Should a formal complaint be dismissed, the parties must be provided written notice of the dismissal along with the reason(s) for the dismissal.

Written notice must be provided simultaneously to the parties.

Notice of Formal Complaint

- After receipt of a formal complaint alleging Title IX sexual harassment under this policy, the Title IX Coordinator, or designee, shall send written notice of the formal complaint to the parties. This notice will provide:
 - Information about the allegations, including sufficient detail, known at the time;
 - 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;
 - Notice to the parties that they may have an advisor of their choice who may be an attorney;
 - Notice that the parties may inspect and review evidence, as applicable; and
 - Notice that knowingly submitting false information during the grievance process is prohibited, and with reasonable time to prepare a response before any initial interview.

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Presumption of Innocence

- The respondent is presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
- You may also not draw any inference about credibility or innocence based solely on a party or witness's refusal to answer a question(s), sit for an interview, or participate in the grievance process.

Bias and Conflict of Interest

- **Should you investigate or participate in the grievance process in this particular case?**
- **You are expected to recuse yourself if you have any actual or perceived bias which could include:**
 - A significant personal or professional relationship with a party
 - Any personal beliefs or life experiences that you believe will cloud your judgement
 - Any academic, voluntary, or professional work expressing views that would, or could create the perception, of a bias
- **You should also recuse yourself if you have any conflict of interest in a situation.** For example: you can't investigate and serve as a party's advisor in the same complaint
- Go into every situation with an open mind and do not prejudge the facts or the parties. If you can't do this, recuse yourself.

Burden of Proof

- The burden of proof is on the College to make all reasonable efforts to gather relevant evidence that is directly related to the formal complaint and to decide about whether this policy has been violated.
- Do not rely solely on the parties and other witnesses when creating a witness list. Call for interviews anyone you think has information even if they were not named a witness.
- Do not rely solely on the parties and witnesses to submit evidence.
- Obtain directly related evidence that you can independently obtain, for example:
 - College CCTV footage
 - Cougar Card activity
 - Class schedules

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Privileged Information/ Records

- During the investigation, and in drafting the Investigation Report, you may not use:
 - Information that is protected by a legally recognized privilege that has not been waived;
 - Any party's medical, psychological, and similar records unless the party has given voluntary, written consent.

Advisors



Parties may be accompanied to any meeting by an advisor of their choice, who may be, but is not required to be, an attorney.



An advisor may not participate in the interview as a representative of that party (that is, answer questions for, or ask questions on behalf of, their advisee or make statements for the advisee).



Advisors may be asked to leave the interview if disruptive or causing an unreasonable delay in the conduct of the interview.



Invitations to Interviews

- Prior to any interview, confirm the meeting with the party or witness via email. That communication **MUST** include:
 - What the meeting will be about;
 - Who will be present;
 - Date and time of the meeting;
 - That they may bring an advisor, but should provide 24 hours notice if they will have an advisor so we may make any necessary arrangements; and
 - That if they need any disability related accommodations to participate to please let us know.

Relevant and Irrelevant Questions

- Relevant questions are ideally open ended, encourage sharing details, non-judgmental, and designed to elicit information relevant to an element of the alleged policy violation.
- Questions about prior sexual behavior are irrelevant except:
 - To prove that someone other than the respondent committed the conduct alleged by the complainant; or
 - If the questions concern specific incidents of the complainant's prior sexual behavior with the respondent and are offered to prove consent.

Review of Evidence

Both parties have the opportunity, upon request, to review evidence that is directly related to the allegations raised in the formal complaint that has been received by the investigator and that is not protected by legal privilege that has not been waived.

The investigator may redact information that is not relevant or as may be required under applicable law.

Requests to review evidence must be made, in writing, to the investigator at least 10 business days prior to review.

Information contained within this review must not be inappropriately disclosed or disseminated by the parties.

Review of Relevant Evidence



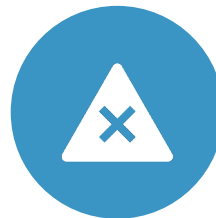
Prior to completion of the investigative report, the parties and their advisors, if any, will receive the relevant evidence directly related to the allegations raised in the formal complaint.



The parties will have 10 business days to review this evidence and to submit a written response, which the investigator will consider prior to completion of the investigation.



The investigator may redact information that is not relevant or as may be required under applicable law.



Information contained within this review must not be inappropriately disclosed or disseminated by the parties.

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Investigation Report

- Upon conclusion of the investigation of the formal complaint, the investigator will prepare a written report that fairly and accurately summarizes the investigation and includes any inculpatory and exculpatory evidence.

Review of Investigative Report

At least 10 business days prior to the hearing, each party and their advisor, if any, will receive the investigative report in an electronic format or a hard copy,.

The investigator may redact information that is not relevant or as may be required under applicable law.

A party may submit a written response to the investigative report within 10 business days of receipt thereof.

Any written response provided by the party under this provision will be included and provided to the decision-maker(s).

Information contained within this review must not be inappropriately disclosed or disseminated by the parties.



Estimated Investigation Timeframe

- All reasonable efforts will be made **to complete the investigation of formal complaints**, exclusive of any appeals, evidence review and comment periods, within **90 business days**.
- The timeframe maybe extended for good cause.
 - E.g., absence of a party or a party's advisor or a witness; concurrent law enforcement activity; the need for language assistance or accommodation of disabilities; etc.
- In the event the estimated timeframe is extended, parties will be notified, in writing, about the extension and the reason for that extension.

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Policy, Policy,
Policy

- Review the Interim Title IX Sexual Harassment Policy and Grievance Procedure and be familiar with its provisions.
- If in doubt? Refer to the policy and ask if you need additional clarification.



Thank You

Prepared by the Office of Equal Opportunity Programs

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