

200.5.1. Procedure for Implementation of the Prohibition Against Sexual Violence Policy

Colleges must respond when a formal complaint of sexual harassment occurs in the school's education program or activity, against a person in the United States. Sexual harassment includes incidents associate with *quid pro quo* harassment; or unwelcome conduct that reasonable person would find severe, pervasive, and objectively offensive. Education program includes locations, events or circumstances over which the school 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. Consistent with both the Clery Act and the Violence Against Women Act (VAWA) sexual harassment will also specifically include incidents of sexual assault, dating violence, domestic violence and stalking. The Final Rule further asserts Colleges are obligated to ensure its entire College community knows who the Title IX Coordinator is, and how to file Title IX reports in order to establish the institution's actual knowledge. **The Title IX Officer for Sussex County Community College is the Director of Human Resources.** The Title IX Coordinator shall oversee all institutional obligations to publish on the website information related to the ongoing trainings and procedures surrounding Title IX investigations for the College community, and will assure information on how to identify and contact the Coordinator is accessible to the entire community, including prospective students and parents. It shall be the Coordinator who has oversight to all Title IX procedures campus-wide.

Title IX Definitions

The College wishes to ensure that all members of our community feel safe in coming forward with a formal complaint of sex discrimination, sexual harassment, assault or violence. In the enforcement of its Title IX responsibilities, the College provides the following definitions:

- **Sexual Harassment** - includes three types of misconduct on the basis of sex, all of which jeopardize equal access to the school's education programs. Sexual harassment includes any instance of quid pro quo harassment by a school's employee; any unwelcome conduct that that a reasonable person would determine is so severe, pervasive and objectively offensive; and any instant of sexual assault (as defined in the Clery Act), dating violence, domestic violence or stalking as defined in the Violence Against Women Act (VAWA).
- **Sexual Assault** - any sexual act directed against another person, without consent of the victim, including instances where the victim is incapable of giving consent.
 - a) Rape is the penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim. This offense includes the rape of both males and females.
 - b) Fondling is the touching of the private body parts of another person for the purpose of sexual gratification, 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 incapacity. Fondling is recognized as an element of other sex offenses.

- c) Incest is sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
 - d) Statutory Rape is sexual intercourse with a person who is under the statutory age of consent.
- **Domestic Violence** - a felony or misdemeanor crime of violence committed by a current or former spouse or intimate partner of the victim; by a person with whom the victim shares a child in common; by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner; by a person similarly situated to a spouse of the victim under the domestic or family violence the jurisdiction in which the crime occurred, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.
 - **Dating Violence** - violence committed by a person against another person with whom he/she has been in a relationship of a romantic or intimate nature. The existence of such a relationship will be determined based on a consideration of the length of the relationship, the type of relationship, and the frequency of interactions between the persons involved in the relationship.
 - **Stalking** - engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others or suffer substantial emotional distress.
 - a) Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about, a person, or interferes with a person's property.
 - b) Substantial Emotional Distress means significant mental suffering or anguish that may, but does not necessarily require medical or other professional treatment or counseling.
 - c) Reasonable Person means a reasonable person under similar circumstances and with similar identities to the victim
 - **Affirmative Consent** - an informed, affirmative, conscious, voluntary, and mutual agreement to engage in sexual activity. It is the responsibility of each person involved in the sexual activity to ensure that s/he has the Affirmative Consent of the other participant(s) to engage in the sexual activity. Lack of protest or resistance does not mean consent nor does silence mean consent.
 - a) Affirmative Consent can be withdrawn or revoked. Affirmative Consent cannot be given by a person who is incapacitated.
 - b) A person with a medical or mental Disability may also lack the capacity to give consent.

- c) Sexual activity with a minor (under 18 years old) is never consensual because a minor is considered incapable of giving legal consent due to age.

Title IX Formal Complaints and Specific Complainant-Respondent Scenarios:

The Title IX Coordinator will have oversight and procedural determination in all Title IX complaint scenarios. The Dean of Students will aid in that oversight and procedural determination only when either the complainant or respondent (or both) are currently enrolled students.

For any Title IX complaint to move forward, whether a student to student; student to staff/faculty; staff/faculty to student or staff/faculty to staff/faculty type, the **respondent** MUST be an individual over whom the school has *substantial control*. This would include being an employee of the school, or a currently attending student of the school.

Mandatory Dismissal

Colleges must dismiss a complaint if the allegations do not meet the 2020 Final Rule definition of Title IX Sexual Harassment. Dismissing an incident as a qualifying Title IX allegation DOES NOT preclude action under the College's Student Code of Conduct (when the Respondent is a student) or under various College employee conduct guidelines (when Respondent is a Staff or Faculty member.)

Definitions of Roles Within a Title IX Investigation Procedure

Complainant: an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

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

Investigator: an individual who carries out all preliminary interviews and gathers any relevant evidence. This individual will complete an "Investigation Report"

Decision Maker: an individual who presides over the hearing, and is the sole individual in the process empowered to strike down questions from either party. The Decision Maker will, at a juncture following the conclusion of the live hearing, issue the "Decision Maker's Written Determination."

Advisor: an individual who represents the complainant or the respondent (but not both, simultaneously) and carries out all cross-examinations. It is only the advisor who can cross-examine parties and witnesses.

Filing a Formal Title IX Complaint

Guidelines and instructions will be issued in the faculty handbook, adjunct faculty handbook, student handbook, the College website, and in all admissions materials, in addition to this Statement of Procedure.

Contact Information:

Title IX Coordinator

Beth Muller

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Response Obligations

When the Title IX Coordinator receives a complaint, the first step will be to contact the Complainant confidentially to discuss the availability of supportive measures available with or without the filing of a formal complaint. At this time, the process for filing a formal complaint will be discussed. The College will respect if a Complainant does not want to file a formal complaint unless the Title IX Coordinator determines that signing a formal complaint to initiate an investigation over the wishes of the complainant is not clearly unreasonable in light of the known circumstances.

A formal complaint is defined as a document signed by a complainant, or by the Title IX Coordinator, alleging sexual harassment against a respondent about conduct within its education program or activity and requesting initiation of the school's grievance procedures. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information required to be listed for the Title IX Coordinator under the Final Rule, and by any additional method the school designates. The phrase "document filed by a complainant" means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the school) that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is *not* a complainant or otherwise a party during a grievance process, and must comply with requirements for all Title IX personnel to be free from conflicts and bias. The Department of Education Final Rule ("Final Rule") further expressly recognizes the legal rights of parents and guardians to act on behalf of parties (including by filing formal complaints) in Title IX matters.

Once properly vetted and identified as a qualifying Title IX allegation, the Coordinator will assure that all procedural steps are taken in a prompt and equitable manner.

Title IX Formal Complaints and Respondent Notification

Respondents must receive written notice of a formal Title IX Complaint to include:

- Identities of the parties involved
- Conduct allegedly constituting sexual harassment
- Date of alleged incident

Written notice to the respondent must also state:

- The respondent is presumed innocent
- The respondent may have an advisor (this is true of the complainant as well)
- The respondent may inspect and review any evidence

Supportive Measures

Non-disciplinary, non-punitive individualized services shall be offered as appropriate, and as reasonably available, without fee or charge, to the complainant or respondent, before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve access to the recipient's education program or activity, without unreasonably burdening the other party; protect the safety of all parties and the recipient's educational environment; and deter sexual harassment. Supportive measures may include counseling, course-related adjustments, modifications of work or class schedules, campus escort services, increased security and monitoring of certain areas of campus, and mutual restrictions on contact between the parties.

Evidentiary Standard

Colleges may use either the "Preponderance" standard, or the "Clear and Convincing" standard. Whichever standard they select must be applied to all Title IX and non-Title IX complaints, whether applied to students or employees. SCCC uses a "Clear and Convincing" standard. This standard requires a finding in favor of the complainant if the evidence shows that a particular violation was substantially more likely to have occurred than not to have occurred. This standard sets a higher threshold than the preponderance of evidence standard but does not rise to the widely recognized standard in criminal cases of "beyond a reasonable doubt."

Inspection of Evidence

Both parties must be given equal opportunity to inspect evidence directly related to the allegations, and *at least 10 days before completion of an investigative report*. Any evidence collected during the investigation process will stay with the Title IX Coordinator.

Informal Resolution

If *both* parties consent to an informal resolution, the College will appoint a facilitator to oversee and document this agreement. This is permissible for all allegations *except for* scenarios which involve a staff or faculty member harassing a student. Either party may withdraw from the informal process, at any point, and resume a formal grievance process.

Investigator's Report

The investigator will submit their completed Investigators Report to the Title IX Coordinator. The idea of a "single investigator", i.e., a single individual who can both investigate facts and evidence, and ALSO serve as an advisor, decision maker, or appeal-level decider is strictly prohibited. The Director of Security, or his or her designee, shall serve as the Investigator.

Live Hearings & Cross Examination

Upon receipt of the report, the Coordinator will ensure a live hearing is scheduled. Depending on the scenarios indicated earlier in this discourse, this may involve the Dean of Students if there is student involvement, or it may involve other supervisory personnel if the matter pertains strictly to staff or faculty. The Dean and several additional staff members will receive advisor training.

The live hearing process will include all witnesses, including the complainant and respondent. The hearing must be held in real time, with both parties present. The complainant and the respondent may choose to attend remotely. The College may choose to hold this hearing virtually using Zoom, or similar HIPAA-complaint service. The entire hearing must be recorded.

Both parties are subject to cross-examination. If an individual refuses to submit to cross-examination, then the Decision Maker may not rely on any written statement from that individual as part of their final determination. Under the new guidelines, each question during the cross examination period must first be vetted by the Decision Maker. Only the Decision Maker has the authority to strike down questions. These new regulations also include protections that prevent either party from being asked about their sexual history.

The complainant and/or the respondent may opt to provide their own advisor of choice, at their own cost, including a n attorney, advocate or parent, or they may be provided an advisor from College staff specifically trained to serve in such a role. It is only the advisor who can cross examine parties in a hearing. Neither the complainant nor the respondent may carry out cross-examinations of other parties.

The Final Rule states that the school cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the school obtains that party's voluntary, written consent to do so.

No disciplinary sanctions or actions that are not supportive measures may be taken against a respondent until a grievance procedure concludes. Colleges cannot impose sanctions that restrict

rights protected under the U.S. Constitution, including the First Amendment, Fifth Amendment, and Fourteenth Amendment, as a way of responding in a non-deliberately indifferent manner.

Elements Required in the Decision Maker's Written Determination

Within a reasonably responsive amount of time, following the conclusion of the live hearing, the Decision Maker must submit to the Title IX Coordinator their written determination. A copy of this determination will be included in the Coordinator's files for future reference. The Coordinator will supply both the Complainant and the Respondent with copies of the same written determination.

- the allegations
- describes the procedural steps
- includes findings of fact
- includes conclusions applying facts to the code of conduct
- includes a rationale for the conclusion regarding each allegation
- describes the appeal process

APPEALS:

Appeals are decided upon by a 3-person panel. Appeals are only reviewed if meeting one or more of the following three criteria:

- A substantiated case of a procedural irregularity
- A substantiated case of a conflict of interest against either the Title IX Coordinator, the Investigator, or the Decision-Maker
- New Evidence

If one or more of these three criteria can be justified, then either the respondent of complainant may submit a written appeal statement to the panel, courtesy of the Title IX Coordinator. Within a reasonable amount of time, the panel will review and determine if any claims made are substantial enough to warrant a reversal of the decision rendered by the Decision Maker. The appeals committee will render a brief written statement of either "decision upheld", or "decision reversed", with ensuing directions only if there is a reversal. This statement will be submitted to the Title IX Coordinator, who will notify the appropriate parties, as well as both the respondent and claimant.

Student Respondents and Appeals

When the respondent is a student, the panel will include the Senior Vice President of Academic & Student Affairs, one Academic Affairs administrator, and one Student Services administrator. Extreme care should be taken to prevent the College's 504 Officer from serving as a panel member on any case where either the student Claimant or student Respondent is a registered

member of the College's Disability Assistance Program. A 2/3 majority vote will prevail, and the decision of the appeal panel is final. Both the complainant and respondent will have equal access to appeal. A complainant is not entitled to a particular sanction against the respondent

Faculty or Staff Respondents and Appeals

When the respondent is a staff or faculty member, the panel will include a member of the College's Executive Team, a Human Resources staff member (except the Title IX Coordinator), and a 3rd administrator, selected in consultation with the College President to assure there is no conflict of interest between the selected 3rd panel member and either the respondent or complainant. A 2/3 majority vote will prevail, and the decision of the appeal panel is final. Both the complainant and respondent will have equal access to appeal. A complainant is not entitled to a particular sanction against the respondent

RETALIATION

Retaliation against an individual for raising an allegation of sexual or gender-based harassment, for cooperating in an investigation of such a complaint, or for opposing discriminatory practices is prohibited. Submitting a complaint that is not in good faith or providing false or misleading information in any investigation of complaints is also prohibited.