

# EMERGENCY POLICY

## SEXUAL HARASSMENT

### I. POLICY

Salt Lake Community College is committed to the advancement of knowledge, freedom of thought and inquiry, and the personal, social, and intellectual development of its students, faculty, and staff. An atmosphere of mutual respect among members of our academic community is necessary for the college to function as a center of academic freedom and intellectual advancement.

It is the policy of the college to provide all college community members, including applicants for admission or employment, with a work and learning environment free from any form of unlawful sexual harassment, or inappropriate gender-based behavior.

Salt Lake Community College must, and does, comply with all federal and state laws that prohibit discriminating against or harassing another based on gender, gender identity, and sexual orientation.

### II. REFERENCES

- A. Violence Against Women, [34 U.S.C. § 12291](#).
- B. Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, [34 C.F.R. §§ 106.1–106.71](#).
- C. Utah Antidiscrimination Act, [Utah Code Ann. §§ 34A-5-101–112](#).
- D. Prohibiting Unlawful Harassment, [Utah Exec. Or. 2006-0012](#).

### III. DEFINITIONS

- A. Advisor: A person a party chooses to assist the party during the grievance process. An advisor may be but is not required to be an attorney.
- B. Advisor Pool: A pool of college employees who have received training on assisting parties through the grievance process.
- C. Complainant: Any person who alleges they are the victim of discrimination or harassment, sexual harassment, or retaliation.

- D. Confidential Employee: Any employee who is a licensed medical, clinical, mental health professional, and their staff when that person is acting in their professional capacity.
- E. Education Program or Activity: Any activity, event, circumstance, or location over which SLCC or a recognized student organization exercises substantial control over both the respondent and the context in which sexual harassment, discrimination, or misconduct occurs.
- F. Formal Complaint: A complaint signed by a complainant or the Title IX coordinator alleging sexual harassment and requesting the college investigate the allegation.
- G. Investigative Plan: A plan for conducting an investigation developed by the investigators with support from the Title IX coordinator.
- H. Investigative Report: A report the investigators prepare after an investigation that includes the investigators' findings.
- I. Investigator Pool: A pool of college employees who have received formal investigator training.
- J. Lead Investigator: The co-investigator who leads the investigation.
- K. Not Responsible: A finding that a respondent has not committed the alleged conduct.
- L. Participant: Any person who is participating or attempting to participate, receiving, or attempting to receive the benefits of any program, service, or activity sponsored by the college.
- M. Preponderance of the Evidence: A legal standard meaning it is more likely than not that the alleged conduct occurred. It is often thought of as a bit more than 50 percent.
- N. Personal Representative: A person chosen by a party to be present during interviews and hearings generally for emotional support.
- O. Respondent: A person against whom someone makes a complaint of sexual harassment or retaliation.
- P. Responsible: A finding that a respondent has committed the alleged conduct.

- Q. Responsible Employee: Any employee who is not a confidential employee and is acting in their capacity as a college employee when they receive information regarding sexual harassment or retaliation.
- R. Retaliation: Any form of sanction or adverse treatment of a person that is intended to restrain, or has the effect of restraining that person from any college program or activity, because that person made a sexual harassment complaint, or participated in any way in a sexual harassment investigation.
- S. Sexual Harassment: Making the provision of aid, benefit, or service of the college conditional on an individual's participation in unwelcome sexual conduct; or unwelcome sexual conduct that is so severe and pervasive and objectively offensive that it interferes with someone's access to a college program or activity. Sexual harassment includes sexual violence, dating violence, domestic violence, and stalking as defined in the Violence Against Women Act.
- T. Supportive Measures: Measures designed to restore or preserve access to the college's programs or activities, protect the safety of all parties, and deter sexual misconduct or harassment. Supportive measures may include counseling, course-related adjustments, modified employment conditions, increased security, etc.
- U. Title IX Coordinator: A SLCC employee who is responsible for ensuring compliance with Title IX of the Civil Rights Act.

#### **IV. PROCEDURES**

##### **A. Emergency Policy**

1. This emergency policy is to ensure the college's compliance with new Title IX regulations, which become effective on August 14, 2020.
2. This emergency policy is effective August 14, 2020.

##### **B. Applicability**

1. All SLCC employees, students, volunteers, and contractors are prohibited from engaging in sexual harassment
2. These procedures apply only to sexual harassment complaints, as defined by Title IX of Education Amendments Act. Complaints of discrimination,

harassment, ADA, or other complaints will follow the procedures in the appropriate policy.

### C. General Information

#### 1. Confidentiality

- a. Unless otherwise required by law or required for the college to fulfill its legal obligation to investigate allegations of harassment or discrimination, the confidentiality of all participants will be respected.
- b. The college encourages all participants to maintain confidentiality.
- c. The respondent is entitled to know who is involved in the process.

#### 2. Retaliation

- a. The college strictly prohibits any form of retaliation against any participant in an investigation under this policy.
- b. Instances of retaliation will be treated as separate offenses and thoroughly investigated and resolved.

#### 3. Presumption, Standard of Proof, and Due Process

- a. All respondents are presumed not responsible for the alleged conduct.
- b. The standard of proof for all sexual harassment, and retaliation determinations and appeals is a preponderance of the evidence.
- c. Respondents are entitled to procedural due process at all times.

#### 4. Cooperation

- a. Except when a student or employee is the victim, the college requires all students and employees to cooperate in all proceedings under this policy.
- b. Failure to cooperate may result in sanctions or corrective action.
- c. Victims are encouraged to participate in proceedings under this policy. However, the college will not compel cooperation.
- d. The college does not withhold supportive measures for victims who do not wish to participate.

#### 5. False Claims

- a. Intentional false claims, false statements, or bad-faith allegations may result in sanctions or corrective action.

- b. The dismissal of a complaint or a finding of not responsible is not evidence that an allegation was false or made in bad faith. The regulations discussed making false claims, but the DoE chose not to include language about false claims except in the notice of investigation.

#### D. Employees' Responsibilities

##### 1. The Title IX Coordinator

- a. For purposes of this policy and procedure, The director of EEO & Title IX coordinator:
  - (1) receives all reports of sexual harassment and retaliation;
  - (2) supervises all investigations of sexual harassment and retaliation;
  - (3) assigns investigators to sexual harassment and retaliation investigations;
  - (4) reviews investigative reports; and
  - (5) refers criminal matters to the appropriate agency.
- b. The Title IX coordinator serves as a resource to provide information and counsel the college community regarding sexual harassment and discrimination retaliation.
- c. Facilitates supportive measures for the complainant and respondent.
- d. The Title IX coordinator must maintain the following records for seven years:
  - (1) each sexual harassment investigation, including:
    - (a) any determination;
    - (b) any audio or audiovisual recording or transcript;
    - (c) disciplinary sanctions imposed; and
    - (d) any remedies provided to the complainant designed to restore or preserve access to an educational program;
  - (2) any appeal and the result;
  - (3) any informal resolution and the result; and

- (4) all materials used to train Title IX coordinators, investigators, decision-makers, and informal process adjudicators.

## 2. Supervisors

Supervisors must:

- a. ensure and maintain a working environment free of intimidation, coercion, sexual harassment, and retaliation;
- b. after receiving a complaint of sexual harassment or retaliation, inform the Title IX coordinator within one business day;
- c. make employees available to participate in an investigation;
- d. in consultation with the next level supervisor, the Title IX coordinator, and the director of Employee Relations, determine the appropriate corrective action for violations of this policy; and
- e. notify the appropriate cabinet member before imposing the corrective action.

## 3. Responsible & Confidential Employees

- a. Responsible employees are required to report sexual harassment or retaliation to the Title IX coordinator within one business day.
- b. Confidential employees are prohibited from disclosing protected information communicated to the employee unless:
  - (1) the individual gives written consent to the employee;
  - (2) the confidential employee is reasonably concerned that the individual will cause serious harm to themselves or others;
  - (3) the information involves suspected the abuse, neglect, or exploitation of a person under 18 years old; or
  - (4) the information involves the suspected abuse, neglect, or exploitation of a vulnerable adult.

## E. Training

1. The Title IX coordinator ensures all persons involved in investigations, informal resolution process, and decision-makers receive appropriate training.

2. Appropriate training must include:
  - a. the definition of sexual harassment;
  - b. the scope of the college's education programs and activities;
  - c. how to conduct investigations, grievance processes, hearing, appeals and informal resolutions without prejudgment of facts at issue, conflicts of interest, and bias;
  - d. training for investigators on the issues of relevance used to create a report that fairly summarizes the evidence;
  - e. training for decision-makers on technology that will be used in a live hearing; and
  - f. training for decision-makers on the relevance of questions and evidence.

#### F. Reporting Sexual Harassment

1. Any person who believes they have experienced or witnessed sexual harassment, discrimination, or related retaliation should report it:
  - a. by using the online reporting [form](#); or
  - b. to their first or second level supervisor; or
  - c. to the Title IX coordinator in person, by mail, telephone, email;  
Title IX Coordinator  
4600 S Redwood Road  
Academic and Administration Building, Suite 201D  
Salt Lake City, UT 84123  
801.957.4561  
[david.jensen@slcc.edu](mailto:david.jensen@slcc.edu)
  - d. Reports of sexual harassment and discrimination may also initiate with:  
U.S. Department of Education–Denver Office  
Office of Civil Rights (OCR)  
Cesar E Chavez Memorial Building  
1244 Speer Boulevard, Suite 310  
Denver, CO 80204-3582  
Telephone: 303-844-5695  
Fax: 303-844-4303  
TDD: 800-877-8339  
Email: [OCR.Denver@ed.gov](mailto:OCR.Denver@ed.gov)

Website: [ocrcas.ed.gov](http://ocrcas.ed.gov)

2. Any responsible person receiving a report of sexual harassment must inform the Title IX coordinator within one business day.
3. Creation of a Formal Complaint
  - a. Immediately upon receiving a report of sexual harassment, the Title IX coordinator will record the report.
  - b. The Title IX coordinator will consider the report and determine if the allegations, if proven, meet the definition of sexual harassment.
  - c. If the Title IX coordinator determines that the report alleges sexual harassment, the Title IX coordinator will
    - (1) consult with the complainant to determine whether to prepare a formal complaint; and
    - (2) notify as appropriate:
      - (a) an employee's first or second-level supervisor; or
      - (b) the dean of students;
  - d. If the report does not allege conduct that, if proven, would be sexual harassment or retaliation, or if the alleged conduct did not occur in an SLCC educational program or activity within the United States, the Title IX coordinator will:
    - (1) notify the person who reported the harassment of the decision;
    - (2) offer supportive measures; and
    - (3) provide potential alternative remedies under other college policies and direct the person to the appropriate college resources.
  - e. Formal complaints may be in writing and must:
    - (1) include the name and, if applicable, the position or title of the respondent;
    - (2) clearly explain the allegation(s);
    - (3) include supporting evidence, if any;
    - (4) the remedies the complainant seeks;

(5) be signed by the complainant; and

(6) be submitted to the Title IX coordinator or designee.

- f. In most cases, the victim may choose whether to file a formal complaint or not. If the Title IX coordinator determines, however, that due to the severity of the allegation, the college must investigate, but the alleged victim does not want to file a formal complaint, the Title IX coordinator will create a formal complaint on behalf of the college and sign it.
- g. SLCC will investigate all conduct that, if proven, would be sexual harassment.

#### G. Support and alternative remedies when a formal complaint is not created

- 1. The college will provide supportive measures to victims regardless of the creation of a formal complaint. The Title IX coordinator will provide victims with information regarding emergency services the college and other organizations offer at the first opportunity.
- 2. The college may still investigate and take appropriate action under another applicable policy.
- 3. A victim may appeal the decision not to create a formal complaint by following the procedure in section IV.O.2.a & b of these procedures.

#### H. Immediate Action

- 1. The Title IX coordinator or the director of Employee Relations will determine if the situation warrants immediate action for the safety of any parties involved.
- 2. If immediate action is warranted, the Title IX coordinator or the director of Employee Relations, as appropriate, will coordinate with the appropriate supervisor or dean of students to implement the necessary action. Immediate action may include:
  - a. the duty to warn anyone in danger;
  - b. an interim suspension;
  - c. separating the involved parties; or
  - d. other actions as necessary to ensure safety.

#### I. Informal Resolution

## 1. General

- a. Informal resolution is a cost-effective manner to resolve some formal complaints. The college encourages an informal resolution to resolve sexual harassment complaints. However, the informal process is voluntary; the college will compel neither the complainant nor the respondent into an informal process.
- b. The parties may request the informal resolution process at any time before a formal hearing by giving written notice to the Title IX coordinator.
- c. Informal resolution processes are appropriate when an allegation of sexual harassment is uncontested.
- d. Informal resolution processes are not available:
  - (1) when the complainant is a student and the respondent an employee;  
or
  - (2) when the allegation involves sexual violence.
- e. The college will not condition any continued or potential employment or access to any college activity on anyone waiving their rights to a formal hearing.

## 2. Requirements

An informal process is available only when:

- a. a complainant or the Title IX coordinator has filed a formal complaint;
- b. both parties agree in writing to an informal process; and
- c. both parties are aware that either party may elect to opt out of the informal process at any time before the parties reach a resolution.

## 3. Informal Adjudication Process

- a. The Title IX coordinator will appoint a qualified adjudicator for the informal resolution process.
- b. The adjudicator may:
  - (1) conduct an informal inquiry to determine the facts;
  - (2) coordinate with the Title IX coordinator to implement supportive measures for either party;

- (3) propose recommendations to either party;
  - (4) facilitate the parties' negotiation to a mutually agreeable resolution;
  - (5) conduct a follow-up review to ensure the parties are abiding by the negotiated resolutions; or
  - (6) take other actions appropriate to an informal process.
- c. The adjudicator will frequently update the Title IX coordinator of the progress of the informal resolution process.
  - d. If the informal resolution process results in an agreement;
    - (1) the adjudicator will prepare a written agreement incorporating all of the negotiated terms; and
    - (2) the parties will sign the agreement, and each will receive a copy of the signed agreement;
    - (3) The agreement must be approved through appropriate college personnel (supervisors if an employee and dean of students if a student).
  - e. Informal adjudication processes are confidential.
    - (1) If either party elects to opt out of the informal resolution process, the investigators may not interview or call the adjudicator as a witness in any subsequent interview or hearing.
    - (2) Investigators may not use any statements made by either party during the informal process in any subsequent formal process.

## J. Investigation

### 1. Investigators

- a. The Title IX coordinator will appoint two investigators from the college's investigator pool and designate one as the lead investigator.
- b. The investigators must not be of the same gender identity.

### 2. Notice of Investigation

- a. The Title IX coordinator will provide notice of the investigation to:

- (1) the complainant;
  - (2) the respondent;
  - (3) the appropriate vice president; and
  - (4) the supervisor or dean of students as appropriate.
- b. The notice of investigation must include:
- (1) the names of the parties involved;
  - (2) the specific policy allegedly violated and a copy of that policy;
  - (3) the specific allegations of misconduct;
  - (4) the date and location of the incident; and
  - (5) notice of the parties' rights to an informal adjudication process and the steps for requesting an informal process.
- c. A statement must accompany the notice that includes:
- (1) an outline of the college's investigation procedures;
  - (2) a declaration that the respondent is presumed not responsible, and that the school will make a determination at the end of the process;
  - (3) notice that the parties may request to inspect and review evidence, and the process for doing so;
  - (4) a warning that prohibits making a false statement or submitting false information; and
  - (5) a statement that if the school begins to investigate allegations not included in the notice, it will provide a separate notice.
- d. The investigators will give the respondent sufficient time after receiving the notice before the initial interview.
3. Postponements and Time Limits
- a. If a time limit in this policy conflicts with any other college policy, the time limits in this policy shall govern.

- b. SLCC is obligated to conduct a prompt, thorough, and fair investigation. While SLCC endeavors to cooperate with law enforcement and other entities, SLCC will neither:
  - (1) unreasonably postpone an investigation, usually no more than one week; nor
  - (2) fail to investigate due to a concurrent investigation by another agency or governmental entity.
- c. The following time limits shall apply to all investigations:
  - (1) Investigators must complete the investigation within 60 days of receiving a complaint.
  - (2) The Title IX coordinator may grant a reasonable extension for complex investigations or other reasonable, extenuating circumstances.
  - (3) The complainant, respondent, and witnesses have five business days to respond to interview summaries.
  - (4) The complainant and the respondent have 10 business days to respond to the final investigation report.

#### 4. Duties of the Assigned Investigators

- a. Assigned investigators will:
  - (1) coordinate with the Title IX coordinator to develop an investigation plan;
  - (2) coordinate interviews with the complainant, respondent, and witnesses;
  - (3) collect relevant evidence;
  - (4) compile an investigation file; and
  - (5) after the investigation, prepare an investigation report for the Title IX coordinator.
- b. Interviews
  - (1) Investigators must give participants sufficient time to prepare for an interview.

- (2) Investigators must give written notice to any participant. The notice must contain:
  - (a) the date, time, and location of the interview;
  - (b) information regarding who will be in the interview;
  - (c) the purpose of the interview; and
  - (d) a notice that the participant may have a personal representative.
- (3) Investigators must interview the complainant, respondent, and all relevant witnesses, including non-college witnesses. Investigators will document attempts to interview witnesses who are unavailable or refuse to cooperate.
- (4) Investigators will not conduct interviews without a co-investigator. If the assigned co-investigator is unavailable, the Title IX coordinator will assign another from the investigator pool.
- (5) The person being interviewed may have a personal representative present. The representative is not allowed to interrupt the interview in any way.
- (6) Investigators will conduct interviews in a respectful, unbiased manner at all times.
- (7) Before any interview, an investigator must read the confidentiality and retaliation admonition.
- (8) If an employee refuses to answer questions, the investigator will read the Garrity warning to the employee and have the employee sign the form.
- (9) Investigators may audio record all interviews using college-owned resources, never on personal equipment.
- (10) Recordings will:
  - (a) be maintained in the investigative file;
  - (b) be retained under GRAMA; and
  - (c) not become part of an employee's personnel file.

- (11) In coordination with the other investigator, the lead investigator will prepare an interview summary report of the interview and:
- (a) provide a draft copy of the interview summary report to the participant interviewed; and
  - (b) provide the participant interviewed five days to refute or clarify the investigators' summary.
  - (c) The investigators may but are not required to change the interview summary report based on responses. However, investigators must inform the participant that any rebuttal or clarification will be attached to the interview summary report as an addendum.

#### 4. The Investigation Report

After the investigation, the investigators shall:

- a. Write an investigation report detailing their findings.
  - (1) The investigation report shall be written using the investigation report template and contain at a minimum:
    - (a) An executive summary that includes:
      - (i) a statement of the allegations including which policies are involved;
      - (ii) the investigators; and
      - (iii) a summarized finding.
    - (b) a procedural history of the investigation;
    - (c) a statement of jurisdiction;
    - (d) the standard of evidence used;
    - (e) the involved parties;
    - (f) the investigation timeline including interview information detailing:
      - (i) the date, time and place of the interviews;
      - (ii) the investigators present; and

(iii) a summary of the interviews.

(g) Additional information gathered;

(h) A proposed finding of fact and analysis; and

(i) A recommendation of either responsible or not responsible.

- b. If the co-investigators do not agree on the recommendation of determination, each shall include their recommendations.
- c. The lead investigator will deliver the completed report to the Title IX coordinator.
- d. The Title IX coordinator will simultaneously provide the report to the parties.

#### K. Response to Report

1. Within 10 business days of the date the investigation report is issued, the parties must file a statement listing:
  - a. the of sections of the report with which the party agrees;
  - b. the sections the party disputes with an explanation for contesting it;
  - c. the witnesses and exhibits the party wants the hearing officer to consider; and
  - d. a list of questions the party proposes to have the advisor ask.
2. The parties may submit a written response to the investigation report. The response:
  - a. may include new evidence; and
  - b. must be limited to 10 pages, excluding attachments.
3. The Title IX coordinator will add responses and attachments to the report and provide the parties with a copy.

#### L. Grievance Process - Hearing

1. General
  - a. Unless the parties have agreed to and completed an informal process, the college will hold a live hearing to address a formal complaint of sexual harassment.

- b. Employees may choose to have a single hearing officer or a grievance committee, as described in section IV.D.6 of the Employee Grievance Policy.
- c. The Title IX coordinator will appoint a qualified hearing officer and, if necessary, assemble a grievance committee and notify the parties of the choice.
- d. If either party believes the appointed hearing officer or committee members have a conflict of interest, the party will immediately notify the Title IX coordinator.
- e. The Title IX coordinator will evaluate the claimed conflict and assign a new hearing officer or committee members if necessary.
- f. In addition to the party's advisor, a party may have one personal representative attend the hearing.
- g. If any party refuses to attend a hearing, the college will conduct the hearing in the party's absence. The party's advisor will represent the party's interests.
- h. Hearings will treat complainants and respondents equitably.

## 2. Expert witnesses

- a. A party who intends to call an expert witness must notify the hearing officer and the other party in writing no later than five business days before the hearing date.
- b. The notice must certify that the expert witness is qualified to offer opinions and contain a written report prepared and signed by the witness or party that includes:
  - (1) the subject about which the expert will testify;
  - (2) the substance of the facts and opinions to which the expert will testify;
  - (3) a summary of the basis for each opinion; and
  - (4) the witness's qualification as an expert.

## 3. Hearing Officer's Duties

- a. The hearing officer or any panel member may not be anyone that acted as an investigator for the complaint, anyone that facilitated an informal process, the Title IX coordinator or a deputy Title IX coordinator.
- b. A hearing officer will oversee the hearing, determine the relevancy of questions, and ensure proper etiquette throughout the hearing.
- c. After the hearing has concluded and within 10 business days, the hearing officer will issue a determination of whether the respondent is responsible for the conduct alleged in the formal complaint.

#### 4. Advisors

- a. The parties may have a personal advisor of their choice present at the hearing.
- b. Unless necessary to conduct the hearing, e.g., a translator, only the advisor and a personal representative may accompany the party.
- c. If a party does not have an advisor:
  - (1) the party must notify the Title IX coordinator at least 10 days before the hearing; and
  - (2) the college will provide an advisor from the pool of advisors at no cost to the party.

#### 5. The Hearing

- a. Hearings must be in real-time and may be in person or virtual using equipment that simultaneously allows the hearing officer and the other party to see and hear the party or witness answering questions.
- b. When appearing virtually, if possible, the person should position themselves so they are visible in their entirety to hearing officer and the other party.
- c. If the college holds the hearing in person, either party may request that the parties remain in separate rooms using the technology described above.
- d. At the hearing officer's discretion, the witnesses may be kept in separate rooms when not answering questions.

#### 6. Presentation of Evidence

- a. The hearing officer will begin the hearing with instructions to the parties and advisors. The instructions will include:

- (1) how the hearing will proceed;
  - (2) the rules of decorum and the sanctions for violating them; and
  - (3) an explanation of the relevancy of questions, including rape shield laws.
- b. The lead investigator will present the findings of the investigation.
  - c. The hearing officer may allow advisors to give an opening or closing statement and may limit the time for a statement. The opportunity and time must be equal for both parties.
  - d. Only a party's advisor or the hearing officer may ask questions of the other party or witnesses; the parties may not question the other party or witnesses.
  - e. An advisor must ask only relevant questions, follow-up questions, or questions that challenge a party or a witness's credibility. Advisors must ask questions verbally, directly, and in real-time.
  - f. Before a party or witness answers a question, the hearing officer must determine whether the question is relevant. The hearing officer's decision is final.
  - g. If the hearing officer determines a question is not relevant, the hearing officer must explain the decision to exclude the question.
  - h. If the hearing is before a panel, panel members may ask questions:
    - (1) after a party's advisor is finished; and
    - (2) by posing the question to the hearing officer who will determine the question's relevance, and follow the procedures described above.
  - i. During the presentation of evidence, the parties, witnesses, advisors, and the hearing officer must act with dignity and respect at all times.
  - j. If any person's behavior is disrespectful, hostile, or undignified, the hearing officer may warn or dismiss that person as the hearing officer deems appropriate.
  - k. If the hearing officer dismisses a party's advisor for misconduct, or if the party asserts that the party's advisor is not acting in the party's interest, the hearing officer will:
    - (1) provide another advisor to act on the party's behalf; and

(2) reschedule the hearing if necessary.

## 7. Recording

All hearings will be audio or video recorded. The college will make the recordings available to the parties and their advisors for inspection and review.

## M. Determination

### 1. Duties of the Hearing Officer and Panel

- a. When the hearing is before a hearing officer, the hearing officer will determine responsibility.
- b. When the hearing is before a panel, the panel members will determine by vote. In the event of a tie vote, the hearing officer will cast the tie-breaking vote.
- c. When determining if a respondent is responsible for the alleged conduct, the hearing officer or hearing panel must:
  - (1) presume that the respondent is not responsible for the alleged conduct;
  - (2) evaluate all relevant evidence, both inculpatory and exculpatory;
  - (3) not base the credibility of a participant based on the participant's status as a complainant or respondent;
  - (4) wait until the conclusion of the hearing; and
  - (5) apply the appropriate, preponderance of the evidence standard.

### 2. Uncooperative Participants

If a party or witness refuses to attend the hearing or submit to questions, the hearing officer must not:

- a. rely on any statement of the party or witness when deciding responsibility; and
- b. draw inferences regarding responsibility based solely on the absence of a party or witness.

### 3. Written Decision

- a. After the hearing officer determines the respondent's responsibility, the hearing officer will draft a written decision.
- b. Determination of Responsible
  - (1) If the hearing officer determines that the respondent is responsible for the conduct, within seven days of the hearing, the hearing officer will deliver the written decision to the respondent's supervisor and the director of Employee Relations or the dean of students, as appropriate.
  - (2) Within three business days, the respondent's supervisor and the director of Employee Relations or the dean of students will determine the sanctions or corrective action they will apply.
  - (3) The hearing officer will include the sanction or corrective action in the written decision.
- c. The written decision must:
  - (1) identify the allegations that potentially establish sexual harassment as defined in this policy;
  - (2) include the procedural steps the college took from the receipt of the formal complaint to the determination, including:
    - (a) notifications to the parties;
    - (b) identifying interviews of parties and witnesses;
    - (c) information about site visits, if any;
    - (d) documents and evidence obtained;
    - (e) the methods used to gather evidence;
    - (f) identifying any hearings held;
    - (g) the facts that support the decision;
    - (h) conclusions regarding the application of the facts to the Code of Student Rights and Responsibilities, Employee Conduct, or other policy allegedly violated;
    - (i) a statement of the rationale for a decision for each allegation;

- (j) disciplinary measures or sanctions, if any, the college will impose on the respondent;
  - (k) any remedies designed to restore or preserve the complainant's access to the college's educational programs and activities; and
  - (l) the bases, time limit, and process for either party to appeal.
- d. Within 10 days of the hearing, the hearing officer must provide the written decision to both parties simultaneously. The time limit can be extended for a good cause.
  - e. The Title IX coordinator is responsible for coordinating the application of any remedies provided.

## N. Appeals

### 1. Parties and Grounds

- a. Either party may appeal a decision regarding responsibility or from the dismissal of any portion of a formal complaint.
- b. A party may appeal for any of the following reasons:
  - (1) a procedural problem that affected the outcome of the hearing;
  - (2) new evidence that was not reasonably available at the time of the decision or dismissal;
  - (3) the Title IX coordinator, the investigators, or the hearing officer had a conflict of interest or bias that affected the outcome; or
  - (4) the severity of the sanction or corrective action.

### 2. Notice of Appeal

- a. The Title IX coordinator must receive written notice of a party's intent to appeal within 10 calendar days after the hearing officer issues the decision.
- b. The notice of appeal must include:
  - (1) the grounds for the appeal;
  - (2) additional statements or arguments the person appealing wants the appeals officer to consider; and

- (3) the remedy that the appealing party is seeking.
  - c. Upon receiving an appeal, the Title IX coordinator must forward the entire appeal to the other party within two business days.
  - d. The other party may submit a written statement or response to the appeal. The Title IX coordinator must receive the written response within 10 days sending the notice to the other party.
  - e. The Title IX coordinator must notify both parties and their advisors of who will determine the appeal and that person's contact information within five business days of receiving the appeal.
3. The Appeal Officer
- a. The appeal officer must not be anyone involved in the matter before the appeal.
  - b. If the respondent is a student, the appeal officer is the vice president for Student Affairs and Enrollment Management or the vice president's designee. If the respondent is an employee, the appeal officer is the president or the president's designee.
  - c. The appeal officer must comply with the standards discussed in section IV.B.3. of this policy.
  - d. Either party may submit a written statement to the appeal officer supporting or challenging the decision of the hearing officer.
  - e. The appeal officer must receive any written statements within 10 calendar days of when the Title IX coordinator sent the notice of appeal to the parties.
  - f. The appeal officer will review all reports, evidence, and recordings and make a decision.
  - g. The appeal officer may:
    - (1) remand to the hearing officer for reconsideration;
    - (2) order a new investigation with different investigators;
    - (3) overturn the determination of responsibility; or
    - (4) modify the level of discipline.

- h. The appeal officer will simultaneously issue a report to both parties detailing the decision and the rationale for the decision.
- i. The decision of the appeal officer is final.

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Date of last cabinet review: August 12, 2020

The originator of this policy & procedure is the director of EEO and Title IX. Questions regarding this policy may be directed to the originator by calling 801-957-4561.