

SOUTH COLLEGE TITLE IX TRAINING

KRAMER RAYSON LLP | *October 21, 2020*



OVERVIEW



One
Title IX Basics



Two
Policy



Three
Roles



Four
Prohibited
Conduct



Five
Process





1. TITLE IX BASICS



“

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance...

□ — 20 USC § 1681



TITLE IX BASICS

- ▣ Originally passed in 1972 as Title IX of the Education Amendments of 1972
- ▣ Department of Education – Primary Oversight
- ▣ Enforced through the Office of Civil Rights
- ▣ DOE Regulations – 34 C.F.R. 1061 *et seq.*
- ▣ 09/22/2017 Interim Guidance – Rescinded, 04/04/2011 Dear Colleague Letter and 04/29/2014 Q’s and A’s
- ▣ Final Rule – effective August 14, 2020

TITLE IX INTERACTION WITH OTHER LAWS

Title IX

Prohibits sex discrimination in educational institutions that receive federal funds

Clery Act

Requires reporting of crimes, timely warnings, education/prevention programs, and policies for sexual assault

VAWA

Amended Clery to expand sexual assault requirements and include dating violence, domestic violence, and stalking; applies to all students/employees



TITLE IX BASICS

- ▣ Covers all education programs and activities inside the United States and applies to all members of the academic community – students, employees and third parties
- ▣ Applies to all institutions receiving any federal funding (public and private)
- ▣ What does it mean to receive federal funds under Title IX?
 - Qualifying federal financial assistance can be in the form of: an award or grant of money; use or rent of federal land or property; federal training
 - Federal financial assistance can also be received indirectly
 - Eg.: Accepting students who receive federal financial aid
- ▣ Gender equity law that prohibits discrimination based on any gender bias (not solely a women's rights law)



TITLE IX OVERVIEW

▣What does Title IX say?

- General mandate: Prohibits recipients of federal financial assistance from discriminating on the basis of sex in education programs or activities. Sexual harassment of students, which includes acts of sexual violence, is a form of sex discrimination prohibited by Title IX.

▣“Education program or activity” includes locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs (also would include buildings controlled by student organizations)



ESSENTIAL TITLE IX COMPLIANCE ELEMENTS

The Regulations Require That Each Recipient:

- ▣ Have a Notice of Non-Discrimination; you must adopt and publish a policy against sex discrimination
- ▣ Have at least one employee designated to coordinate and carry out Title IX responsibilities
- ▣ Have grievance procedures providing for prompt and equitable resolution of sex discrimination, sexual harassment, sexual assault, dating and domestic violence, and stalking complaints



NOTICE OF NONDISCRIMINATION

- ▣ Each school district, college, and university must publish a notice (i.e. policy) of nondiscrimination stating that it does not discriminate on the basis of sex in the education programs and activities that it operates.
- ▣ The notice must be widely distributed to students, parents, employees, prospective students and employees, and other relevant individuals.
- ▣ South College's Non-Discrimination Policy is located at the following places:
 - <https://www.south.edu/student-resources/title-ix/>
 - South College Student Handbook
 - South College Academic Catalog



TITLE IX EVOLUTION

- ▣ Focus on educational safety and fairness
- ▣ 2011 Guidance and Dear Colleague Letter
 - Included positive changes to support complainants, but was criticized for lack of due process for accused
 - 2014 Q & A
- ▣ 2017 Interim Guidance
- ▣ 2020 Final Rule



2020 FINAL RULE CHANGES

- ▣ Strikes a balance for protection of all involved parties:
 - Protects complainants by strict enforcement of policy, expanded definition of sexual harassment (though narrowed in scope) and broad required reporting and investigation language
 - Protects due process rights of respondents and reserves disciplinary or punitive sanctions/remedies until after an investigation and live hearing



2020 FINAL RULE CHANGES

- ▣ Stalking, dating violence and domestic violence are included in the definition of “sexual harassment”
- ▣ “Sexual harassment” based on unwelcome conduct must be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient’s education program or activity
- ▣ Requires, for post-secondary institutions, a live hearing as part of the grievance process
- ▣ Provides multi-layer approach to investigations



2020 FINAL RULE CHANGES

- ▣ Process must allow cross-examination of all witnesses, including the complainant
 - Cross-examination cannot be performed by the complainant or respondent, but must be performed by a representative or advisor
 - 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; provided, however, that the decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions

CROSS-EXAMINATION

2011 Guidance

“Discouraged cross-examination” by the parties, suggesting that to recognize a right to such cross-examination might violate Title IX by exposing a complainant to threatening or intimidating behavior

2017 Guidance

Required that any right or opportunity available to one party be available to the other, including the right to cross-examine parties/witnesses



CROSS EXAMINATION 2020

- ▣ Woven into the grievance procedures as necessary due process
- ▣ Availability of “live” hearing in different room
- ▣ Cross-examination can only be done by advisors
- ▣ Statements not subject to cross-examination cannot be relied upon by the decisionmakers in determining responsibility

DUE PROCESS RIGHTS

2011 Guidance	2017 Guidance
<p>Provided that any due process protections afforded to accused students should not “unnecessarily delay” resolving the charges against them</p>	<p>Contained several provisions requiring that complainants and respondents be afforded identical rights and opportunities and stated that schools may not rely on fixed rules that favor one party over another</p>



DUE PROCESS RIGHTS 2020

- ▣ No bias based on status of complainant or respondent
- ▣ No sanctions or remedies issued until after full grievance procedure
- ▣ Supportive measures available
- ▣ Live hearing is mandatory for post-secondary institutions

A close-up photograph of a stack of several books. The books are arranged vertically, with their pages fanned out. A blue pencil and a green pen are resting on the top of the stack, with their tips pointing towards the center. The lighting is soft, highlighting the texture of the paper and the colors of the writing instruments. A dark grey rectangular box is overlaid on the bottom right portion of the image, containing the text '2. POLICIES' in white, serif, uppercase letters.

2. POLICIES

SOUTH COLLEGE TITLE IX POLICY

- ◆ Conforms to new DOE regulations
- ◆ Applies to sex discrimination as well as sexual misconduct, including broadly defined sexual harassment
- ◆ Applies to all South College locations, events or circumstances where South College exercises substantial control over the respondent and the context in which the harassment occurs



SOUTH COLLEGE TITLE IX POLICY

- ❑ **Retaliation**: for South College's policy to be effective and to meet the goals of Title IX, retaliation is prohibited. This means intimidation, threats, and coercion against individuals who file a Title IX complaint are strictly prohibited
- ❑ The identify of any individual who has made a report of discrimination must be kept confidential
- ❑ Complaints alleging retaliation may be filed according to the same Title IX grievance procedures



SOUTH COLLEGE TITLE IX POLICY

▣ Sexual Harassment

Prohibited Sexual Harassment includes:

- ✦ An employee conditioning the provision of aid, benefit or services on an individual's participation in unwelcome sexual conduct (i.e. *quid pro quo* harassment)
- ✦ Unwelcome conduct determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a person equal access to South College's education programs or activities (hostile environment)
- ✦ Sexual Assault to include dating violence, domestic violence and stalking



SOUTH COLLEGE TITLE IX POLICY

▣ Responsible Employees

- All violations of the policy should be reported to the applicable Title IX Coordinator
- Requires “responsible employees” who may learn about potential violations to report them to the Title IX Coordinator

Responsible Employees Include:

- Institutional Leadership: Vice Chancellor of Institutional Advancement and Effectiveness, Vice Chancellor of Student Services, and Chief Academic Officer
- Dean of Academic and Student Services
- Director of Student Success/Affairs
- Vice President of Talent Management and Human Resources (for employees)



SOUTH COLLEGE TITLE IX POLICY

▣ Supportive Measures

- ✦ Requires supportive measures to be offered to complainants whether or not they file a formal complaint
- ✦ Defines supportive measures to conform to the regulations
- ✦ Supportive measures must be maintained as confidential to the extent confidentiality would not impair the College from providing the supportive measures

GRIEVANCE PROCEDURE



◆ Formal complaints are subject to a grievance procedure

- Requires complainants and respondents to be treated equally
- Requires an objective evaluation of all the evidence by the investigator
- Prohibits conflicts of interest by Title IX Coordinator, investigator, decisionmaker or facilitator of an informal process
- Provides the presumption that respondent is *not* responsible for alleged conduct until a determination of responsibility at end of grievance process and live hearing

GRIEVANCE PROCEDURE (CONT.)

- ◆ Establishes the burden of proof (preponderance of the evidence)
- ◆ Places the burden of gathering sufficient evidence to reach a determination regarding responsibility on South College
- ◆ Provides parties equal opportunity to present evidence during investigation
- ◆ Provides both the parties equal opportunity to review any evidence obtained as part of investigation in order to meaningfully reply to evidence prior to conclusion of investigation



GRIEVANCE PROCEDURE (CONT.)



- ◆ Requires investigation report to be sent to the parties with time to respond before it is final
- ◆ Requires a final investigation report that summarizes relevant evidence to be sent to the parties for review and written response prior to the hearing
- ◆ Sets forth limited grounds for dismissing the formal complaint prior to the hearing

THE HEARING

- ◆ Absent dismissal, the parties are provided live hearing before the decision-maker, the Title IX Conduct Committee
- ◆ The Title IX Conduct Committee will consist of three members who select a chair
- ◆ Each party's advisor is permitted to ask the other party and any witnesses relevant questions
- ◆ Upon request by either party, the hearing will be conducted with parties located in separate rooms
- ◆ Where parties or witnesses do not submit to cross-examination the Committee cannot rely on any statement by that party/witness

THE HEARING (CONT.)

- ◆ Following the hearing, Committee determines by majority vote whether respondent violated the Title IX policy and prepares a report on each allegation
- ◆ If violation of the policy occurred, the Committee allows parties to submit an impact statement
- ◆ The Committee thereafter notifies the parties of the remedies provided and sanctions imposed
- ◆ Either party can appeal to the Vice Chancellor of Institutional Advancement and Achievement, Dr. Kim Hall, on defined limited grounds



3. ROLES

- A. Complainant
- B. Respondent
- C. Advisor
- D. Coordinator
- E. Investigator
- F. Hearing Officers

ROLES

Complainant	An individual who is alleged to be the victim of prohibited conduct
Respondent	An individual who is alleged to have engaged in prohibited conduct and who is named in a report alleging violation
Title IX Advisor	An individual who is selected by either the Complainant or Respondent and is permitted to participate in the Title IX grievance process, including conducting cross-examination during a live hearing

WHAT DOES A TITLE IX ADVISOR DO?



Accompany a Complainant or Respondent to meetings with investigators



Review evidence and investigation reports



Cross examine the opposing party and witnesses during a live hearing

WHAT DOESN'T A TITLE IX ADVISOR DO?



Act as legal counsel or speak on behalf of the Complainant or Respondent



Ask cross examination questions not requested by the Complainant or Respondent



Determine a finding of responsibility for any college policy

ROLES

Coordinator	Individual who oversees the Title IX investigatory and hearing process
Investigator	Individual responsible for investigating formal complaints of Title IX Sexual Harassment
Hearing Officers	Individuals responsible for facilitating a Title IX Hearing and determining responsibility and sanctions, if applicable

RESPONSIBILITY: TITLE IX COORDINATOR

A college or university must notify all students and employees of the name or title and contact information of the designated Title IX coordinator for each campus.

The coordinator's responsibilities include oversight of all Title IX complaints and addressing any patterns or systemic problems that arise during the review of such complaints.



SOUTH COLLEGE'S TITLE IX COORDINATORS

Title IX Coordinator for South College

Dr. Stacy Waddell
Vice Chancellor of Student Services
616 Marriott Drive, Nashville, TN 37214
swaddell@south.edu
629-802-3000

Deputy Title IX Coordinator for the Main Campus and Parkside Campus

Dr. A.J. Chase
Dean of Academic and Student Services
3904 Lonas Drive, Knoxville, TN 37909
achase@south.edu
865-293-4576

Deputy Title IX Coordinator at the Asheville Campus

Dr. Lisa Satterfield
Dean of Academic and Student Services
140 Sweeten Creek Road, Asheville, NC 28803
lsatterfield@south.edu
828-398-2566

Deputy Title IX Coordinator at the Nashville Campus

Dr. Holly Paul
Dean of Academic and Student Services
616 Marriott Drive, Nashville, TN 37214
hpaul@south.edu
629-802-3135

Deputy Title IX Coordinator at the Atlanta Campus

Dr. Danielle Kwasnik
Dean of Academic and Student Services
2600 Century Parkway NE, Atlanta, GA 30345
dkwasnik@south.edu
470-322-1211

Deputy Title IX Coordinator for Online

Dr. Mari-Kathryn Arnold
Director of Student Affairs
3904 Lonas Drive, Knoxville, TN 37909
marnold@south.edu
912-392-4733

Deputy Title IX Coordinator (Employees):

Mr. Randall Carr
Vice President of Talent Management & Human Resources
3904 Lonas Drive, Knoxville, TN 37909
randall.carr@south.edu
865-293-4550



TITLE IX COORDINATOR, CONT'D.

- ▣ Title IX coordinators must be trained on what constitutes sexual misconduct, sexual harassment and VAWA sexual misconduct
- ▣ Title IX coordinators should be thoroughly knowledgeable of the grievance procedures and available to meet with students as needed
- ▣ Title IX coordinators should not have other job responsibilities that create a conflict of interest
- ▣ Title IX coordinators facilitate investigation of complaints using trained investigators

TITLE IX COORDINATOR: 4 DUTIES

RECEIVE

Receive reports and formal complaints regarding allegations of Title IX Sexual Misconduct

OVERSEE

Oversee Title IX Investigators throughout the investigation process

INFORM

Inform the Complainant or Respondent if the other party has requested an Informal Resolution

NOTIFY

Notify the Complainant or Respondent if the other party has filed an appeal

WHAT DOESN'T THE TITLE IX COORDINATOR DO?



Represent or advocate for any party or any position in the proceeding



Determine a finding of responsibility for a violation of any college policy



Determine the sanction for a finding of responsibility

WHAT DOES AN INVESTIGATOR DO?



Interview Complainants, Respondents, and witnesses



Gather and review relevant evidence



Create Investigation Report summarizing the facts gathered during the investigation



Provide Investigation Report to Title IX Coordinator for use in the hearing

WHAT DOESN'T AN INVESTIGATOR DO?



REPRESENT OR ADVOCATE FOR
ANY PARTY OR ANY POSITION
IN THE PROCEEDING



DETERMINE A FINDING OF
RESPONSIBILITY FOR ANY
COLLEGE POLICY



DETERMINE THE SANCTION
FOR A FINDING OF
RESPONSIBILITY

WHAT DOES A HEARING OFFICER DO?



Preside over a live Title IX hearing



Ask questions of the respondent and complainant, as well as their witnesses

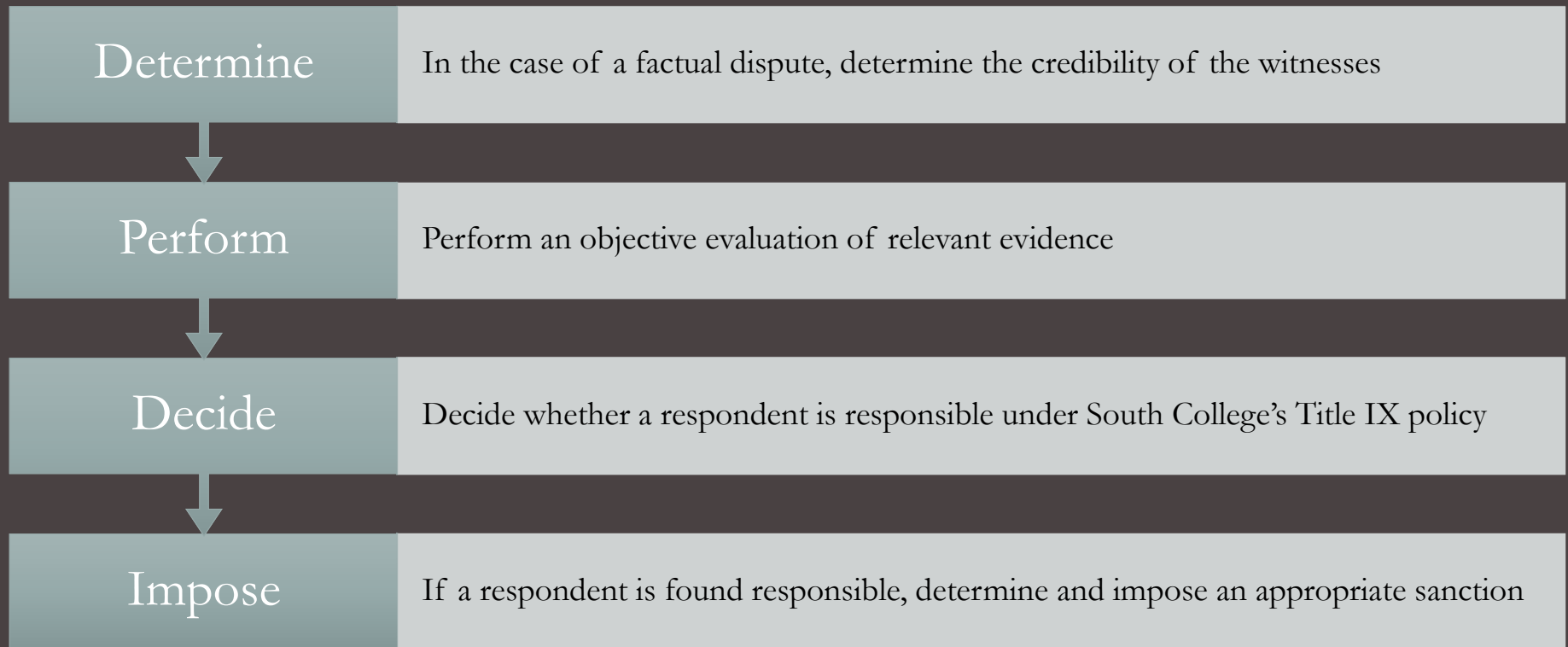


Maintain order and decorum of the parties and their advisors at the Title IX hearing



Determine what evidence is relevant and may be presented at the Title IX hearing

WHAT DOES A HEARING OFFICER DO?



WHAT DOESN'T A HEARING OFFICER DO?



Represent or advocate for any party or any position in the proceeding



Determine a finding of responsibility for any other college policy

DO YOU HAVE A CONFLICT OF INTEREST?



Everyone involved in a Title IX grievance process and hearing must support an objective evaluation of the evidence.



Objectivity includes the absence of any personal or professional interest that affects your ability to be fair and impartial to all parties in the complaint process and that actually affects the outcome of the proceeding.



Before you serve as a Title IX Coordinator, Investigator, or Hearing Officer, you must ensure that you do not have a conflict of interest.

THINGS THAT COULD BE A CONFLICT OF INTEREST

A family relationship with the parties, their advisors, or anyone who may serve as a witness in the investigation

A personal relationship with a party, an advisor, or a witness that leads you to give that individual advantage or disadvantage in the investigation

A business relationship with the parties, their advisors, or anyone who may serve as a witness in the investigation

Giving any financial assistance or gifts to a party or a witness in the investigation

Receipt of any financial assistance or gifts from a party or witness in the investigation

Prior knowledge about a party outside of what is learned in the proceeding that bears on your analysis

- Only if knowledge exists outside of the scope of the Title IX Coordinator's role at the College



CONFLICT OF INTEREST

- ◆ If you think you may have a conflict of interest, advise the Title IX Coordinator immediately
- ◆ Parties may raise conflicts of interest as a basis for appealing final decisions

GENERAL ETHICAL CONSIDERATIONS

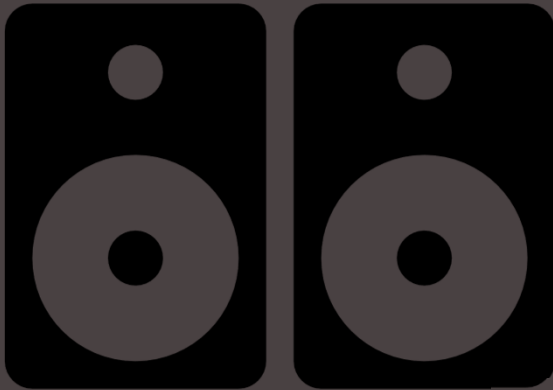


Beyond conflicts of interest, those involved in the process must approach their service impartially and without any prejudice



You must set aside impressions or biases you have from movies, TV, news, other cases in which you have been involved, and personal opinions

ETHICAL CONSIDERATIONS



◆ DO NOT: Rely on sex stereotypes

- “Women are manipulative and they lie.”
- “Men are aggressive.”
- “A lady wouldn’t put herself in that position.”

ETHICAL CONSIDERATIONS

DO NOT: Make credibility determinations based solely on the sex or gender of a party

“I’m going to believe the woman because women have been ignored for too long in other cases and we need to balance things.”

“He was a boy scout so he is a man of honor, even though her version of events seems plausible.”

ETHICAL CONSIDERATIONS

DO NOT: Make credibility determinations based solely on a person's status as a reporting or responding party in a matter

“Anyone who would file a complaint about something like this is crazy.”

“If this woman would go so far as to file a formal complaint, then he must have done it.”

ETHICAL CONSIDERATIONS

DO: Approach the process with an open mind and without any preconceived notions

Look at every decision you make as an objective evaluation of the facts and policies

Treat every participant and witness with respect



4. PROHIBITED CONDUCT

Title

X



KINDS OF CASES

- Title IX sexual harassment, Title IX sexual assault, Title IX stalking, or Title IX interpersonal violence
- Involving students, employees, or a combination
- Quid Pro Quo harassment by employees

SEXUAL ASSAULT

As defined in the Clery Act, including any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.

Fondling: 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.

Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

Rape: 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.

Statutory Rape: Sexual intercourse with a person who is under the statutory age of consent.

INTERPERSONAL VIOLENCE

Domestic Violence

A pattern of abusive behavior in a relationship that is used by one partner to maintain power and control over another current or former intimate partner. Domestic violence can be physical, sexual, emotional, economic, or psychological actions or threats of actions that influence another person. This includes any behavior that intimidates, manipulates, humiliates, isolates, frightens, terrorizes, coerces, threatens, hurts, injures, or wounds someone.

Dating Violence

Violence and abuse committed by a person to exert power and control over a current or former dating partner. Dating violence often involves a pattern of escalating violence and abuse over a period of time. Dating violence covers a variety of actions and can include physical abuse, physiological and emotional abuse, and sexual abuse. It can also include “digital abuse”, the use of technology, such as smartphones, the internet, or social media, to intimidate, harass, threaten, or isolate a victim.



As defined in the Violence Against Women Act (VAWA), stalking is a pattern of repeated and unwanted attention, harassment, contact, or any other course of conduct directed at a specific person that would cause a reasonable person to feel fear. Stalking is dangerous and can often cause severe and long-lasting emotional and psychological harm to victims. Stalking often escalates over time and can lead to domestic violence, sexual assault, and even homicide. Stalking can include frightening communications, direct or indirect threats, and harassing a victim through the internet.

TITLE IX SEXUAL HARASSMENT

Quid Pro Quo	Conditioning the provision of an aid, benefit, or service of South College on an individual's participation in unwelcome sexual conduct
Hostile Environment	Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectionably offensive that it effectively denies a person equal access to an educational program or activity
Sexual Assault	Dating violence, domestic violence, or stalking



5. PROCESS

A. Reports and knowledge

B. Complaint

C. Investigation

D. Hearing

E. Appeal



KNOWLEDGE OF SEXUAL HARASSMENT ALLEGATIONS

- ▣ When South College has actual knowledge, it must respond.
- ▣ Actual knowledge means:
 - Report of sexual harassment by student or someone on his/her behalf
 - School personnel witnessed the sexual harassment
- ▣ Information reported to Title IX Coordinator or other “responsible employees”



INFORMAL COMPLAINT

- ▣ When South College has actual knowledge of report of sexual harassment, it must respond in a way that is not deliberately indifferent or clearly unreasonable
- ▣ Title IX Coordinator responds to the informal complaint
 - Advises complainant of availability of supportive measures (with or without a formal complaint)
 - Advises complainant of his/her right to file a formal complaint to initiate investigation
 - Advises complainant of how to file the formal complaint



SUPPORTIVE MEASURES

- ▣ Must be offered whether formal complaint is filed or not
- ▣ Purpose is to ensure equal educational access, protect safety, or deter sexual harassment
 - Supportive measures are individualized
 - Supportive measures are non-punitive, non-disciplinary and not unreasonably burdensome to the other party



EXAMPLES OF SUPPORTIVE MEASURES

- ▣ Academic accommodations (for additional information, see below)
- ▣ Medical and mental health services, including counseling
- ▣ Change in campus housing and/or dining locations
- ▣ Assistance in finding alternative housing
- ▣ Assistance in arranging for alternative College employment arrangements and/or changing work schedules



EXAMPLES OF SUPPORTIVE MEASURES

- ▣ A “No contact” directive pending the outcome of an investigation. Such a directive serves as notice to both parties that they must not have verbal, electronic, written, or third-party communication with one another
- ▣ Providing an escort to ensure that the student can move safely between school programs and activities
- ▣ Transportation accommodations, such as shuttle service, cab voucher, or parking arrangements to ensure safety and access to other services
- ▣ Assistance identifying an advocate to help secure additional resources or assistance including off-campus and community advocacy, support, and services

FORMAL COMPLAINT



In circumstances when a Complainant wishes the College to take action under its Title IX policy he or she must submit a formal, written complaint.



The formal complaint is a document submitted by the Complainant alleging Title IX Sexual Misconduct under College policy and indicates a request by the Complainant that the College investigate the allegations.



College cannot refuse to investigate based on lack of, or delay in, law enforcement investigation

FORMAL COMPLAINT WILL BE INVESTIGATED, UNLESS:



No
Violation

The allegations in a formal complaint do not meet the definition under Title IX Sexual Misconduct under the policy or did not occur within the College's Educational Program or Activity



Complaint
Withdrawn

The Complainant withdraws the request to investigate



Not
Enrolled

The Respondent is no longer enrolled or employed by the College

WRITTEN NOTICE



◆ After receipt of a formal complaint and determination to proceed under the Title IX procedures based on the information provided in the formal complaint, the Title IX Coordinator will provide written notice to the Complainant and Respondent. This notice will be provided before any initial interview is conducted with the Respondent to include, and not limited to, the following:

- Indication that the College's process does not discriminate against a Complainant or Respondent on the basis of sex;
- A link to applicable college policies;
- Information regarding the opportunity for informal resolution;
- Key details of allegations;
- A statement that the Respondent is not presumed responsible until a final determination is made under the College's process;
- Information regarding the role of a Title IX Advisor in the process, and the College's ability to provide a Title IX Advisor to a Complainant or Respondent at their request;
- An opportunity to review evidence as part of the investigation and hearing process; and
- Information prohibiting false information as part of the College's review and fair notice of applicable College policy.

TITLE IX INVESTIGATION

- ◆ After receipt of a formal complaint and determination to proceed under the Title IX procedures based on the information provided in the formal complaint, the Title IX Investigator will:
 - Meet with the Complainant and Respondent with their chosen Advisors and any reported witnesses
 - Gather any evidence provided by involved parties
 - Create an investigation report outlining the information provided in the course of the investigation



TITLE IX INVESTIGATION



Title IX Investigators will provide advance written notice to Complainants and Respondents in advance of any subsequent interviews, meetings, or requests for meetings.



Both the Complainant and Respondent may select a Title IX Advisor to participate

The Title IX Advisor may be an attorney.

The College will provide a Title IX Advisor upon request to a Complainant or Respondent, at no cost.

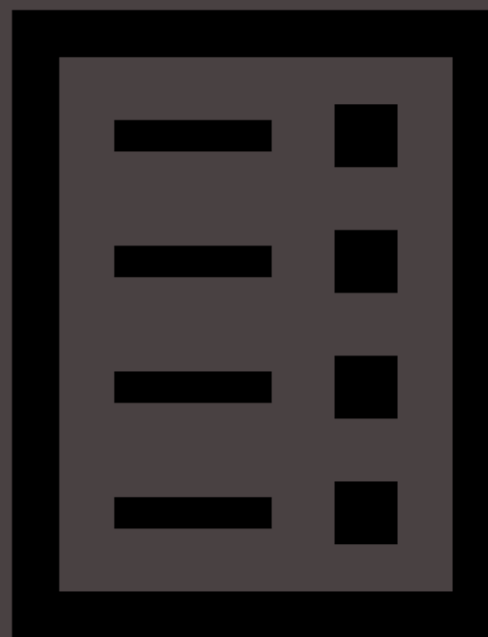


College can limit participation of advisors during investigation, but limitation must be even

TITLE IX INVESTIGATION EVIDENCE

- REVIEW OF EVIDENCE BEFORE INVESTIGATION REPORT

Upon review of all information gathered the investigator will provide via electronic or hard copy format, to the Complainant and Respondent and their respective Title IX Advisors, all evidence directly related to the allegations with at least ten (10) College business days to inspect, review, and respond.



TITLE IX INVESTIGATION FINAL REPORT



After the ten (10) College business day review period has passed, and upon review of any written response from the Complainant and/or Respondent, the investigator will provide a final investigation report to the Complainant and Respondent and their respective Title IX Advisors summarizing all relevant evidence. This investigation report will be provided to both the Complainant and Respondent at least ten (10) College business days before the live hearing.

TITLE IX INVESTIGATION FINAL REPORT



The final investigation report will include:

Summary of allegations

Timeline of events

Summary of meetings with parties and witnesses

Any evidence provided by the parties

Analysis of information provided

TITLE IX INVESTIGATION FINAL REPORT

The Title IX Investigator will forward the final investigation report to the Title IX Coordinator. The Title IX Coordinator will then forward the final investigation report to the Hearing Officers.



Investigator



Coordinator



Hearing Officers



TITLE IX HEARING

This is where and how the Hearing Officers determine whether Respondent is responsible for the allegations of sexual harassment and appropriate sanctions (for Respondent) and remedies (for Complainant).



TITLE IX HEARING QUESTIONS PRESENTED

- ◆ Did the prohibited conduct occur as alleged?
- ◆ If the conduct did occur, does that conduct violate the College's policy?
- ◆ If the policy was violated, what is the appropriate action to remedy the effects of the conduct and prohibit its recurrence?

*According to the "Preponderance of the Evidence" standard



TITLE IX HEARING GROUND RULES

1. The Title IX Hearing Officers are to begin with the presumption that the respondent is not responsible for a violation of college policy
2. Only evidence relevant to the questions presented on the previous slide will be allowed
3. In sexual assault cases, information that would be prohibited under Rape Shield laws (evidence of the reporting party's prior sexual history with people other than the responding party) will not be permitted
4. No opening or closing statements



TITLE IX HEARING GROUND RULES

5. Title IX Advisors may ask questions, but may not make statements or speeches
6. Parties may not ask questions of the opposing party
7. If participants violate these rules or otherwise disrupt the proceeding, the Title IX Hearing Officer may remove them and proceed with the Title IX hearing in their absence
8. In the event a party is not willing to be cross examined, their testimony and/or statements may not be considered in the final determination

TITLE IX HEARING STANDARD OF PROOF



In all Title IX hearings, determinations are made according to the preponderance of the evidence standard.



Other ways of expressing this standard:

- more likely than not
- 50.1% of the evidence
- the evidence is equal but one party is more credible than the other



LIVE HEARING OPTIONS

- ▣ At the request of either party, the Complainant and Respondent must be located in separate rooms as long as the set-up allows the parties to simultaneously see, hear, etc. each other.

TITLE IX HEARING DECISION



The decision is not made at the Title IX hearing



The decision is made after the Title IX Hearing Officers have considered all of the relevant evidence and college policies, and will be communicated to the parties in writing



HEARING OFFICERS' REPORT

- ▣ The Hearing Officers' determination must be in writing and be specific
- ▣ The written decision must include:
 - Identification of the allegations potentially constituting sexual harassment;
 - 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;
 - Findings of fact supporting the determination;



HEARING OFFICERS' REPORT

- ▣ The written decision must include:
 - Conclusions regarding the application of the recipient's code of conduct to the facts;
 - 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
 - The recipient's procedures and permissible bases for the complainant and respondent to appeal.



APPEALS

- ▣ Appeal of Hearing Officers' Determination
- ▣ Both parties must be offered ability to appeal from
 - A determination regarding responsibility; and
 - South College's dismissal of a formal complaint or any allegations in the formal complaint.



APPEAL BASES

- ▣ Appeals must be based on:
 1. Procedural integrity which affected the outcome of the matter;
 2. New evidence that was not reasonably available at the time of the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
 3. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against either the individual complainant or respondent that affected the outcome of the matter; and
 4. College can also offer an appeal on additional bases as long as the offer is made to both parties.



APPEALS

- ▣ South College must notify both parties in writing when appeal is filed
- ▣ Appeal procedures must be implemented equally for both parties
- ▣ Decisionmaker on appeal cannot be the same decisionmaker who determined responsibility or dismissal
- ▣ Decisionmaker on appeal cannot be investigator or Title IX Coordinator



APPEALS

- ▣ Decisionmaker(s) (who must be trained and will have no conflict of interest or bias for or against complainants or respondents) will:
 - Give both parties a reasonable, equal opportunity to submit a written statement in support of or challenging the outcome;
 - Issue a written decision describing result of the appeal and rationale for the result; and
 - Provide the written decision to both parties simultaneously
 - The decision on appeal is final



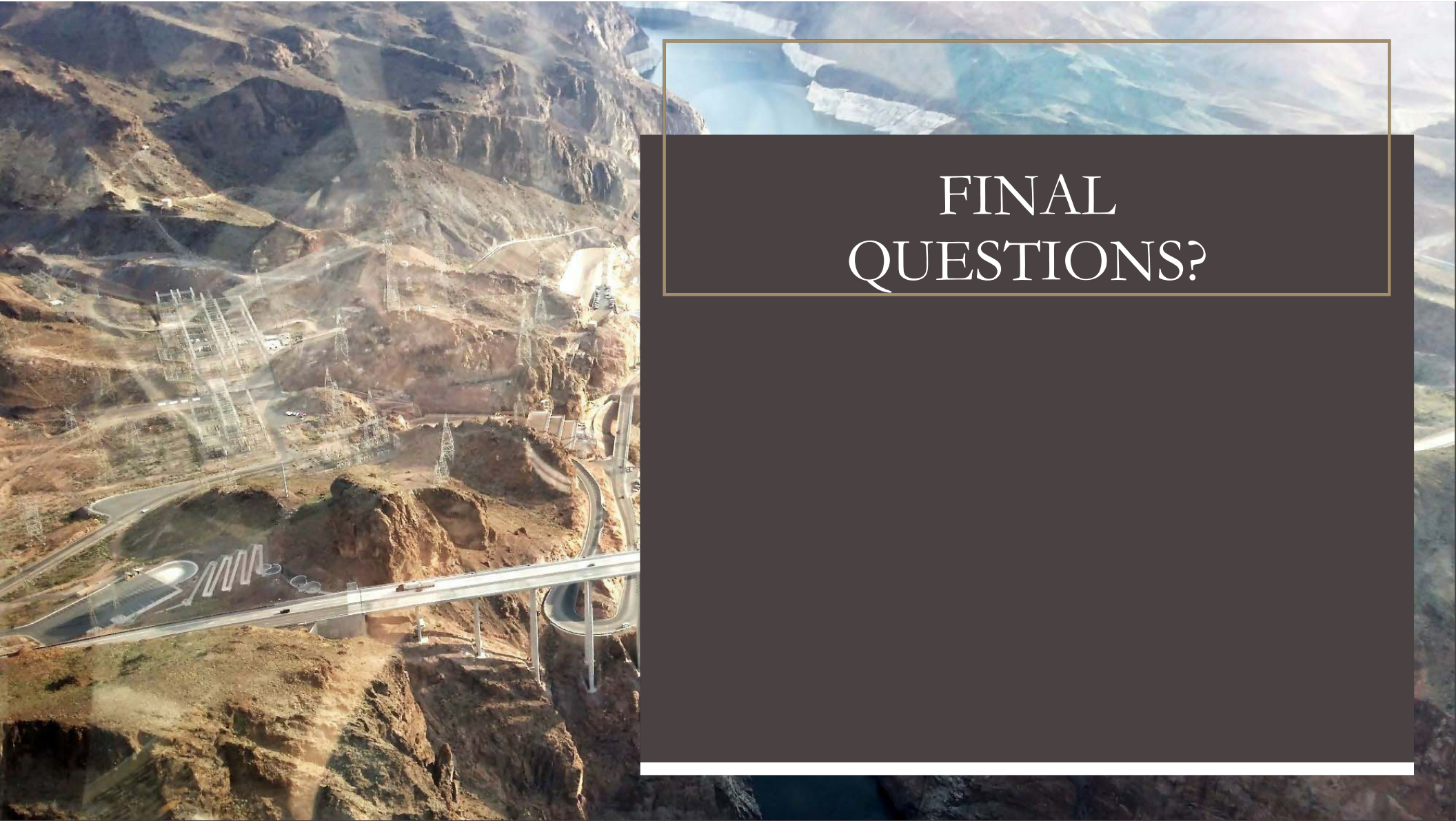
INFORMAL RESOLUTION

- ▣ Available at any stage before formal finding for other complaints.
 - Only available if both parties give voluntary, informed written consent to attempt informal resolution
- ▣ Informal resolution can be by mediation, restorative justice, etc.



INFORMAL RESOLUTION

- ▣ A party can also withdraw from the informal resolution process at any time and resume the grievance process
- ▣ Never available when a student accuses a South College employee of sexual harassment
- ▣ Attempts at informal resolution must occur through a trained facilitator



FINAL
QUESTIONS?