

# PROCEDURE

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P6HX23-4.332      PROCEDURE: TITLE IX, SEXUAL HARASSMENT, AND SEXUAL MISCONDUCT GRIEVANCE PROCEDURE

I.      Purpose

Title IX of the Educational Amendments of 1972 prohibits any person in the United States from being discriminated against on the basis of sex in seeking access to any educational program or activity receiving federal financial assistance. The U.S. Department of Education, which enforces Title IX, has long defined the meaning of Title IX's prohibition on sex discrimination broadly to include various forms of sexual harassment and sexual violence that interfere with a student's ability to equally access educational programs and opportunities.

The requirements and protections of this Procedure apply equally regardless of sex, sexual orientation, gender identity, or other protected classes covered by federal or state law. All requirements and protections are equitably provided to individuals regardless of such status or status as a Complainant, Respondent, or Witness.

II.      Definitions

A.      Covered Sexual Harassment - For the purposes of this Title IX Grievance Procedure, "covered sexual harassment" includes any conduct that occurs in any education program or activity as defined in this Procedure on the basis of sex that satisfies one or more of the following:

1. An employee conditioning educational benefits on participation in unwelcome sexual conduct (i.e., quid pro quo).
2. Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the College's education program or activity.

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3. Sexual assault (as defined in the Clery Act), which includes any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent.
4. Dating violence (as defined in the Violence Against Women Act (VAWA) amendments to the Clery Act), which includes any violence committed by a person:
  - a. Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
  - b. Where the existence of such a relationship shall be determined based on a consideration of the following factors:
    - i. The length of the relationship;
    - ii. The type of relationship;
    - iii. The frequency of interaction between the persons involved in the relationship.
5. Domestic violence (as defined in the VAWA amendments to the Clery Act), which includes any felony or misdemeanor crimes 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 Florida's domestic or family violence laws 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 Florida.
6. Stalking (as defined in the VAWA amendments to the Clery Act), meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

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- a. Fear for their safety or the safety of others; or
  - b. Suffer substantial emotional distress.
- B. Consent - For the purposes of this Title IX Grievance Procedure, “consent” is a positive, voluntary, continuous permission to engage in a sexual act. Consent is not passive or silent. Consent to one form of sexual activity cannot automatically imply consent to another form of sexual activity. Consent may be withdrawn at any time. Previous relations or prior consent cannot imply future consent. Consent cannot be given by someone who is incapacitated by drugs or alcohol or who is otherwise unconscious. An individual may also be unable to give consent due to his or her age or intellectual or other disability.
- C. Education Program or Activity - For the purposes of this Title IX Grievance Procedure, the College’s “education program or activity” includes:
- 1. Any on-campus premises.
  - 2. Any off-campus premises that the College has substantial control over. This includes buildings or property owned or controlled by a recognized student organization.
  - 3. Activity occurring within computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of the College’s programs and activities over which the College has substantial control.
- D. Informal Complaint - An informal complaint process is a fully voluntary, structured interaction between the parties that is designed to help them address and resolve an issue at the earliest stage possible. Informal resolutions are flexible meaning the process can move forward in many different ways. As a general rule an informal complaint process:

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1. Will not receive a comprehensive investigation.
  2. May be kept confidential.
  3. Will not be referred for official disciplinary action if an agreement between the parties and the College is reached.
- E. Formal Complaint - For the purposes of this Title IX Grievance Procedure, “formal complaint” means a document – including an electronic submission - filed by a complainant with a signature or other indication that the complainant is the person filing the formal complaint, or signed by the Executive Director of Organizational Culture and Engagement/Title IX Coordinator, alleging sexual harassment against a respondent about conduct within the College’s education program or activity and requesting initiation of the procedures consistent with the Title IX Grievance Procedure to investigate the allegation of sexual harassment.
- F. Complainant - For the purposes of this Title IX Grievance Procedure, Complainant means any individual who has reported being or is alleged to be the victim of conduct that could constitute covered sexual harassment as defined under this Procedure.
- G. Relevant Evidence and Questions - “Relevant” evidence and questions refer to any questions and evidence that tends to make an allegation of sexual harassment more or less likely to be true.
- H. Respondent - For the purposes of this Title IX Grievance Procedure, Respondent means any individual who has been reported to be the perpetrator of conduct that could constitute covered sexual harassment as defined under this Procedure.
- I. Privacy vs. Confidentiality - The College makes every effort to protect the privacy of all individuals involved in reporting and any investigation; however, a complainant's request for

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confidentiality will be weighed against the College's obligation to the safety of all its faculty, staff, students, and visitors. Each individual reporting or alleging sexual misconduct shall be counseled concerning his or her rights accordingly.

- J. Disability Accommodations - This Procedure does not alter any College obligations under federal disability laws including the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Parties may request reasonable accommodations for disclosed disabilities to the Executive Director of Organizational Culture and Engagement/Title IX Coordinator at any point before or during the Title IX Grievance Process that do not fundamentally alter the Process. The Executive Director of Organizational Culture and Engagement/Title IX Coordinator will not affirmatively provide disability accommodations that have not been specifically requested by the Parties, even where the Parties may be receiving accommodations in other College programs and activities.
- K. Making a Report Regarding Covered Sexual Harassment to the College - Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Executive Director of Organizational Culture and Engagement/Title IX Coordinator, or by any other means that results in the Executive Director of Organizational Culture and Engagement/Title IX Coordinator receiving the person's verbal or written report.

Contact Information for the Executive Director of Organizational Culture and Engagement/Title IX Coordinator can be found online at:

<https://www.spcollege.edu/friends-partners/about/organizational-culture-and-engagement/equal-access-equal-opportunity>

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- L. Confidential Reporting - The College will limit the disclosure as much as possible, even if the Executive Director of Organizational Culture and Engagement/Title IX Coordinator determines that the request for confidentiality cannot be honored.
  
- III. Non-Investigatory Measures Available Under the Title IX Grievance Procedure
  - A. Supportive Measures - Complainants (as defined above), who report allegations that could constitute covered sexual harassment under this Procedure, have the right to receive supportive measures from the College regardless of whether they desire to file a complaint. Supportive measures are non-disciplinary and non-punitive.
  
  - B. Emergency Removal - The College retains the authority to remove a respondent from any program or activity on an emergency basis, where the College:
    - 1. Undertakes an individualized safety and risk analysis, and
    - 2. Determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of covered sexual harassment justifies a removal.
  
  - C. Administrative Leave - The College retains the authority to place an employee respondent on administrative leave during the Title IX Grievance Process, consistent with College policies.
  
- IV. The Title IX Grievance Process
  - A. Filing a Formal Complaint
    - 1. The timeframe for the Title IX Grievance Process begins with the filing of a Formal Complaint. Once the Formal Complaint is filed, the Grievance Process will be concluded in a reasonably prompt manner, and no longer than ninety

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(90) calendar days, excluding the days the College is closed. However, the Process may be extended at the discretion of the Executive Director of Organizational Culture and Engagement/Title IX Coordinator for a good reason, including but not limited to the absence of a party, a party’s advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

2. To file a Formal Complaint, a complainant must provide the Executive Director of Organizational Culture and Engagement/Title IX Coordinator with a written, signed complaint describing the facts alleged. Anyone may file a Formal Complaint who has/is participating in, or attempting to participate in, the education programs or activities of the College, as defined herein.
  
  3. If a complainant does not wish to make a Formal Complaint, the Executive Director of Organizational Culture and Engagement/Title IX Coordinator may determine a Formal Complaint is necessary. The College will inform the complainant of this decision in writing, and the complainant need not participate in the process further but will receive all notices issued under this Procedure and Process.
  
  4. Nothing in this Title IX Grievance Procedure prevents a complainant from seeking the assistance of state or local law enforcement alongside the appropriate on-campus process.
- B. Informal Resolution - A complainant who files a Formal Complaint may elect, at any time, to address the matter through the College’s Informal Resolution Process. All Parties to a Formal Complaint must agree to enter the Informal Resolution Process through an informed written consent. Information about this Process is available here:

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<https://www.spcollege.edu/friends-partners/about/organizational-culture-and-engagement/equal-access-equal-opportunity>.

- C. Multi-Party Situations - The College may consolidate Formal Complaints alleging covered sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of covered sexual harassment arise out of the same facts or circumstances.
- D. Determining Jurisdiction - The Executive Director of Organizational Culture and Engagement/Title IX Coordinator or designee will determine if the Title IX Grievance Process should apply to a Formal Complaint. The Process will apply when all of the following elements are met, in the reasonable determination of the Executive Director of Organizational Culture and Engagement/Title IX Coordinator:
  - 1. The conduct is alleged to have occurred in the United States;
  - 2. The conduct is alleged to have occurred in the College education program or activity; and
  - 3. The alleged conduct, would constitute covered sexual harassment as defined in this Procedure.

If all of the elements are met, the College will investigate the allegations according to the Grievance Process. If any of the elements are not met the complaint will be dismissed. All parties will be notified of the dismissal.

- E. Discretionary Dismissal - The Executive Director of Organizational Culture and Engagement/Title IX Coordinator or designee may dismiss a Formal Complaint brought under the Title IX Grievance Procedure, or any specific allegations raised within that Formal Complaint, at any time during the investigation or hearing, if:



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1. A complainant notifies the Executive Director of Organizational Culture and Engagement/Title IX Coordinator in writing that they would like to withdraw the Formal Complaint or any allegations raised in the Formal Complaint.
2. The respondent is no longer enrolled or employed by the College; or,
3. If specific circumstances prevent the College from gathering evidence sufficient to reach a determination regarding the Formal Complaint or allegations within the Formal Complaint.

Any party may appeal a dismissal determination using the process set forth in "Appeals," below.

- F. Notice of Allegations - The Executive Director of Organizational Culture and Engagement/Title IX Coordinator will draft and provide the Notice of Allegations to any party to the allegations of sexual harassment. Such notice will occur as soon as practicable, after the College receives a Formal Complaint of the allegations, if there are no extenuating circumstances. The parties will be notified and given reasonable time to review and prepare a response before an initial interview. The Executive Director of Organizational Culture and Engagement/Title IX Coordinator or designee may determine that the Formal Complaint must be dismissed on the mandatory grounds identified above, and will issue a Notice of Dismissal. If such a determination is made, any party to the allegations of sexual harassment identified in the Formal Complaint will receive the Notice of Dismissal in conjunction with, or in a separate correspondence thereafter, the Notice of Allegations.
- G. Ongoing Notice - If, in the course of an investigation, the College decides to investigate allegations about the complainant or respondent that are not included in the Notice

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of Allegations and are otherwise covered "sexual harassment" falling within the Title IX Grievance Procedure, the College will notify the parties whose identities are known of the additional allegations by their College email accounts or other reasonable means. The parties will be provided sufficient time to review the additional allegations to prepare a response before any initial interview regarding those additional charges.

## V. Advisors of Choice

Students participating as Complainant or Respondent in this process may be accompanied by an Advisor of Choice to any meeting or hearing to which they are required or are eligible to attend.

## VI. Delays

The Executive Director of Organizational Culture and Engagement/Title IX Coordinator, or designee may provide reasonable extension of time based on extenuating circumstances.

## VII. Investigation

### A. General Rules of Investigations

1. The Executive Director of Organizational Culture and Engagement/Title IX Coordinator and/or an investigator designated by the Executive Director of Organizational Culture and Engagement/Title IX Coordinator will perform an investigation under a reasonably prompt timeframe of the conduct alleged to constitute covered sexual harassment after issuing the Notice of Allegations.
2. The College and not the parties, has the burden of proof and the burden of gathering evidence, i.e., the responsibility of showing a violation of this Procedure has occurred. This burden does not rest with either party, and either party may decide not to share their account of what occurred or may decide not to participate in an

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investigation or hearing. However, both parties are subject to the findings of the investigation. This does not shift the burden of proof away from the College and does not indicate responsibility.

3. The College cannot access, consider, or disclose medical records without a waiver from the party (or parent, if applicable) to whom the records belong or of whom the records include information. The College will provide an equal opportunity for the parties to present witnesses, and other evidence.

## B. Inspection and Review of Evidence

1. All parties must submit any evidence they would like the investigator to consider prior to when the parties' time to inspect and review evidence begins. Prior to the completion of the investigation, the parties will have an equal opportunity to inspect and review the evidence obtained through the investigation. Evidence that will be available for inspection and review by the parties will be any evidence that is directly related to the allegations raised in the Formal Complaint.
2. The parties will have ten (10) calendar days (excluding the days the College is closed) to inspect, review, and submit a written response by email to the investigator. The investigator will consider the parties' written responses before completing the Investigative Report. Any evidence subject to inspection and review will be available at any hearing, including for purposes of cross-examination. The parties and their advisors must sign an agreement not to disseminate, photograph, or otherwise copy any of the evidence subject to inspection and review or use such evidence for any purpose unrelated to the Title IX Grievance Process.

## C. Inclusion of Evidence Not Directly Related to the Allegations - Evidence obtained in the investigation that is determined in the

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reasoned judgment of the investigator not to be directly related to the allegations in the Formal Complaint will not be disclosed, or may be appropriately redacted before the parties' inspection to avoid disclosure of personally identifiable information of a student. Any evidence obtained in the investigation that is kept from disclosure or appropriately redacted will be documented in a "privilege log" that may be reviewed by the parties and their advisors, if any.

## VIII. Investigative Report

- A. The Executive Director of Organizational Culture and Engagement/Title IX Coordinator or designee will create an Investigative Report that fairly summarizes relevant evidence and will provide that Report to the parties at least ten (10) calendar days (excluding the days the College is closed) prior to the hearing for each party's review and written response.
- B. The investigator may redact irrelevant information from the Investigative Report when that information is contained in documents or evidence that is/are otherwise relevant.

## IX. Hearing

### A. General Rules of Hearings

1. The College will not issue a disciplinary sanction arising from an allegation of covered sexual harassment without holding a live hearing.
2. The live hearing may be conducted with all parties physically present in the same geographic location, or, at the College's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually.
3. All proceedings will be recorded.

## X. Continuances or Granting Extensions

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The College may determine that multiple sessions or a continuance (i.e., a pause on the continuation of the hearing until a later date or time) is needed to complete a hearing. If so, the College will notify all participants and endeavor to accommodate all participants' schedules and complete the hearing as promptly as practicable.

## XI. Newly Discovered Evidence

If a party identifies new evidence or witnesses that were not reasonably available prior to the live hearing and could affect the outcome of the matter, the party may request that such evidence or witnesses be considered at the live hearing.

## XII. Participants in the Live Hearing

A. Live hearings are not public, and the only individuals permitted to participate in the hearing are as follows:

### 1. Complainant, Respondent (The Parties), Advisor of Choice, and Legal Representative

- a. The parties cannot waive the right to a live hearing.
- b. The College may still proceed with the live hearing in the absence of a party, and may reach a determination of responsibility in their absence, including through any evidence gathered that does not constitute a "statement" by that party.

### 2. The Decision-maker

- a. The hearing panel ("The Panel") will consist of a panel of decision-makers.
- b. The decision-maker cannot draw an inference about the determination regarding responsibility based solely on a party's absence from the live hearing or refusal to answer cross examination or other questions or exercise their right to remain silent.

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- c. No member of the hearing body will also have served as the Executive Director of Organizational Culture and Engagement/Title IX Coordinator, Title IX investigator, or advisor to any party in the case, nor may any member of the hearing body serve on the appeals body in the case.
- d. No member of the hearing body will have a conflict of interest or bias in favor of or against complainants or respondents generally, or in favor or against the parties to the particular case.
- e. The hearing body will be trained on topics including how to serve impartially, issues of relevance, including how to apply the rape shield protections provided for complainants, and any technology to be used at the hearing.
- f. The parties will have an opportunity to raise any objections regarding a decision-maker's actual or perceived conflicts of interest or bias at the commencement of the live hearing.

### 3. Witnesses

- a. Witnesses cannot be compelled to participate in the live hearing, and have the right not to participate in the hearing free from retaliation.

### XIII. Hearing Procedures

For all live hearings conducted under this Title IX Grievance Process, the procedure will be as follows:

- A. The Panel will open and establish rules and expectations for the hearing.

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- B. The Parties will each be given the opportunity to provide opening statements.
- C. The Panel will ask questions of the Parties and Witnesses.
- D. Parties will be given the opportunity for live cross-examination after the Panel conducts its initial round of questioning. During the Parties' cross-examination, the Panel will have the authority to pause cross-examination at any time for the purposes of asking the Panel's own follow up questions; and any time necessary in order to enforce the established rules of decorum.
- E. Determination Regarding Responsibility

- 1. Standard of Proof

The College uses the preponderance of the evidence standard for investigations and determinations regarding responsibility of formal complaints covered under this Procedure. This means that the investigation and hearing determine whether it is more likely than not that a violation of the Procedure occurred.

- 2. General Considerations for Evaluating Testimony and Evidence

While the opportunity for cross-examination is required in all Title IX hearings, determinations regarding responsibility may be based in part, or entirely, on documentary, audiovisual, and digital evidence, as warranted in the reasoned judgment of the Hearing Officer.

- 3. Components of the Determination Regarding Responsibility

The written Determination Regarding Responsibility ("Determination") will be issued simultaneously to all parties through their College email account, or other

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reasonable means as necessary. The Determination will include:

- a. Identification of the allegations potentially constituting covered sexual harassment.
- b. 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.
- c. Findings of fact supporting the determination.
- d. Conclusions regarding which section of the Code of Conduct, if any, the respondent has or has not violated.
- e. A statement of, and rationale for, a determination regarding responsibility for each allegation.
- f. A statement of, and rationale for, any disciplinary sanctions the recipient imposes on the respondent for each allegation.
- g. A statement of, and rationale for, 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.
- h. The recipient's procedures and the permitted reasons for the complainant and respondent to appeal (described below in "Appeal").
- i. If there are no extenuating circumstances, the determination regarding responsibility will be issued by the College after the completion of the hearing.



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- j. The determination regarding responsibility becomes final on the date issued unless appealed timely.

## XIV. Appeals

### A. Each party may appeal:

1. The dismissal of a formal complaint or any included allegations and/or
2. A determination regarding responsibility. To appeal, a party must submit their written appeal within five (5) calendar days (except for days the College is closed) of being notified of the decision, indicating the grounds for the appeal.

### B. The limited grounds for appeal available are as follows:

1. Procedural irregularity that affected the outcome of the matter (i.e., a failure to follow the College's own procedures).
2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter.
3. The Executive Director of Organizational Culture and Engagement/Title IX Coordinator, investigator(s), or the Panel had a conflict of interest or bias for or against an individual party, or for or against complainants or respondents in general, that affected the outcome of the matter.

The submission of appeal stays any sanctions during the pendency of an appeal. Supportive measures and remote learning opportunities remain available during the pendency of the appeal.

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Appeals will be decided by a trained appellate officer, who will be free of conflict of interest and bias, and will not serve as investigator, Executive Director of Organizational Culture and Engagement/Title IX Coordinator, or hearing decision-maker in the same matter.

The outcome of the appeal will be provided in writing simultaneously to both parties, and include the rationale for the decision.

## XV. Retaliation

- A. No person may intimidate, threaten, coerce, or discriminate against any individual because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding or hearing under this Title IX Grievance Procedure.
- B. Any intimidation, threats, coercion, or discrimination, for the purpose of interfering with any right or privilege secured by Title IX or its implementing regulations constitutes retaliation. This includes any charges filed against an individual for Code of Conduct violations that do not involve sex discrimination or sexual harassment, but that arise from the same facts or circumstances as a report or complaint of sex discrimination or a report or Formal Complaint of sexual harassment.

## XVI. Review of Recording

The recording of the hearing will be available for review by the parties.

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