



In compliance with the Department of Education, and as required by Title IX of the Education Amendments Act of 1972: "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."

## DEPARTMENT OF EDUCATION

**AGENCY:** Office for Civil Rights, Department of Education.

Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance

**ACTION:** Final rule.

<https://www2.ed.gov/about/offices/list/ocr/docs/title-ix-regs-unofficial.pdf>

**SUMMARY:** The Secretary of Education amends the regulations implementing Title IX of the Education Amendments of 1972 (Title IX). The final regulations specify how recipients of Federal financial assistance covered by Title IX, including elementary and secondary schools as well as postsecondary institutions, (hereinafter collectively referred to as "recipients" or "schools"), must respond to allegations of sexual harassment consistent with Title IX's prohibition against sex discrimination. These regulations are intended to effectuate Title IX's prohibition against sex discrimination by requiring recipients to address sexual harassment as a form of sex discrimination in education programs or activities. The final regulations obligate recipients to respond promptly and supportively to persons alleged to be victimized by sexual harassment, resolve allegations of sexual harassment promptly and accurately under a predictable, fair grievance process that provides due process protections to alleged victims and alleged perpetrators of sexual harassment, and effectively implement remedies for victims. The 2 final regulations also clarify and modify Title IX regulatory requirements regarding remedies the Department may impose on recipients for Title IX violations, the intersection between Title IX, Constitutional protections, and other laws, the designation by each recipient of a Title IX Coordinator to address sex discrimination including sexual harassment, the dissemination of a recipient's non-discrimination policy and contact information for a Title IX Coordinator, the adoption by recipients of grievance procedures and a grievance process, how a recipient may claim a religious exemption, and prohibition of retaliation for exercise of rights under Title IX.

**DATES:** These regulations are effective August 14, 2020

For more information related to all revisions please refer to the Federal Register.

34 CFR Part 106  
Docket ID ED-2018-OCR-0064  
RIN 1870-AA14



## NON-DISCRIMINATION AND HARASSMENT POLICY & PROCEDURES

Cape Fear Community College, its faculty and staff, and the Board of Trustees are fully committed to the principles and practice of equal employment and educational opportunities. The College does not discriminate against applicants, students, or employees in any programs and activities provided on the basis of race, color, national origin, sex (including pregnancy and sexual orientation), gender (including gender identity and status as a transgender or transsexual individual), disability, religion, age, genetic information, veteran status or any other protected status as required by Title IX of the Educational Amendments of 1972, Americans with Disabilities Act of 1990, Section 504 of the Rehabilitation Act of 1973, Title VII of the Civil Rights Act of 1964 and any other applicable statutes and CFCC policies.

This statement applies to all students and employees at Cape Fear Community College. The Dean of Student Affairs serves as CFCC's Title IX Coordinator and has primary responsibility for coordinating the College's efforts to comply with and carry out its responsibilities under Title IX, which prohibits sex discrimination in all the operations of the College, as well as any other protected status as delineated above and retaliation for the purpose of interfering with any right or privilege.

*CFCC Board of Trustees, Approved, July 30, 2020*

### DEFINITIONS

The following definitions shall apply to this procedure and shall be collectively referred to herein as "Discrimination". The definitions are not intended to operate as speech codes, promote content and viewpoint discrimination or suppress individual viewpoints in the academic setting. Indeed, just because a student's or employee's speech or expression is deemed offensive by others, it does not mean it constitutes discrimination or harassment. In applying these definitions, College administrators shall view the speech or expression in its context and totality.

**Discrimination:** any act or failure to act that unreasonably differentiates treatment of others based solely on their protected status and is sufficiently serious, based on the perspective of a reasonable person, to unreasonably interfere with or limit the ability of that individual to participate in, access or benefit from the College's programs and activities. Discrimination may be intentional or unintentional.

**Harassment:** a type of discrimination that happens when verbal, physical, electronic or other behavior based on a person's protected status interferes with a person's participation in the College's programs and activities and it either creates an environment that a reasonable person would find hostile, intimidated or abusive or where submitting to or rejecting the conduct is used as the basis for decisions that affect the person's participation in the College's programs and activities. Harassment may include, but is not limited to: threatening or intimidating conduct directed at another because of the individual's protected status; ethnic slurs, negative stereotypes and hostile acts based on an individual's protected status.

**Protected Status:** race, color, national origin, sex, religion, pregnancy, disability, genetic information, age, political affiliation or veterans' status.

**Standard of Evidence** - the College uses the "preponderance of evidence standard", or "more likely than not", as the standard for proof of whether a violation occurred. In the student due process hearing and employee grievance process, legal terms like "guilt", "innocence" and "burden of proof" are not applicable. Student and employee due process hearings are conducted to take into account the totality of all evidence available from all relevant sources. The College will find the alleged perpetrator, or respondent, either "responsible" or "not responsible" for violating College policies and procedures.

If the aforementioned conduct is viewed by a reasonable person and/or complainant to be so "**severe, pervasive, and objectively offensive**" that it effectively denies a person equal access to CFCC's educational programs or activities, it will then be determined by the Title IX Coordinator whether the behavior constitutes "Sexual Harassment".

For formal complaints related to allegations of sexual harassment, including *quid pro quo*, sexual assault, dating violence, domestic violence, and/or stalking, please refer to “CFCC’s Sexual Harassment Policy and Procedures”.

## **STATEMENTS OF PROHIBITION**

### **Prohibition of Retaliation.**

The College strictly prohibits punishing students or employees for asserting their rights to be free from Discrimination. Retaliation against any person participating in connection with a complaint of Discrimination is strictly prohibited. Reports of retaliation will be addressed through this procedure and/or other applicable College procedures. Retaliation includes, but is not limited to, any form of intimidation, punitive actions from authority figures or peers, reprisal (acts of vengeance) or harassment. Retaliation is a serious violation and should be reported immediately. The College will take appropriate disciplinary action against any employee or student found to have retaliated against another.

### **Prohibition of Providing False Information.**

Any individual who knowingly files a false report or complaint, who knowingly provides false information to College officials, or who intentionally misleads College officials involved in the investigation or resolution of a complaint may be subject to disciplinary action including, but not limited to expulsion or employment termination. The College recognizes that an allegation made in good faith will not be considered false when the evidence does not confirm the allegation(s) of Discrimination.

## **REQUESTING ACCOMMODATIONS**

Students and employees with disabilities wishing to make a request for reasonable accommodations, auxiliary communication aids or services, or materials in alternative accessible formats should contact the College’s Disability Support Services or Human Resources. Information provided by individuals is voluntary and strict confidentiality is maintained. All requests for accommodations will be considered following the appropriate state and federal laws. The College will also provide reasonable accommodation of an individual’s religious beliefs/practices provided such expression/practice does not create a hostile environment for other students and employees and/or the accommodation does not cause an undue hardship for the College.

## **REPORTING OPTIONS**

Any student wishing to make a report relating to Discrimination may do so by reporting the concern to the Dean of Student Affairs. For Discrimination incidents between students and employees, the Dean of Student Affairs will work in partnership with the Executive Director of Human Resources, or designee, to investigate and resolve the allegations.

Any employee wishing to make a report relating to Discrimination may do so by reporting the concern to CFCC Human Resources.

## **INITIAL INVESTIGATION**

As these Procedures apply to both students and employees as either the Complainant or the Respondent, the administrator receiving the incident report will determine if the case should be handled by: 1) the Dean of Student Affairs, or designee (student/student); 2) the Executive Director of Human Resources, or designee (employee/employee); or 3) both (student/employee). For incidents involving students and employees, the College will utilize due process and grievance procedures as applicable.

- Individuals (“Complainants”) are urged to do so in writing as soon as possible, but no later than thirty (30) days after disclosure or discovery of the facts giving rise to the complaint. Complaints submitted after the thirty (30) day period will still be investigated, however, Complainants should recognize that delays in reporting may significantly impair the ability of College officials to investigate and respond to such complaints. As stated any complaint involving a student and employee, the Dean of Student Affairs will collaborate with the College’s Executive Director of Human Resources, or designee. During the course of the investigation, consultation may be required with other relevant College administrators and the College attorney, if appropriate.

- During the investigation, and if applicable to the complaint, the Dean of Student Affairs and/or the Executive Director of Human Resources, shall meet with the Complainant and the alleged Respondent separately and give each party an equal opportunity to provide evidence, including potential witnesses. Both parties will be given access to any information provided by the other in accordance with any state or federal confidentiality laws.
- During the investigation process, the Dean of Student Affairs and/or the Executive Director of Human Resources, may implement temporary measures in order to facilitate an efficient and thorough investigation process as well as to protect the rights of all parties involved. The temporary actions or supportive measures include, but are not limited to: reassignment of class schedules or work assignments; temporary removal from campus; “no contact” agreements; if such action is the best interest of the College and parties involved.
- As appropriate, a confidential file regarding the complaint shall be maintained by the Dean of Student Affairs and/or the Executive Director of Human Resources. To the extent possible, the College will keep all information relating to the complaint and investigations confidential; however, to maintain compliance with the Clery Act, both parties will be informed of the outcome of any institutional proceedings under these procedures.
- The Dean of Student Affairs and/or the Executive Director of Human Resources shall make every effort to conclude the investigation as soon as possible, but no later than thirty (30) calendar days. If the nature of the investigation requires additional time, all parties involved will be notified of this extension.
- Complainants will be notified of available counseling services and other interim supportive or protective as needed.

## **RECOMMENDATION AND APPEAL**

After the investigation is complete, the Dean of Student Affairs and/or the Executive Director of Human Resources, will put forward a recommendation of finding, based on the standard of evidence, and sanction(s) to both the Complainant and Respondent. If the recommendation is accepted by both parties involved, the recommendation and sanction(s) will become effective. The Dean of Student Affairs and/or the Executive Director of Human Resources will submit to each party a final outcome letter that will include, but not limited to, the following:

- A. Determination if the respondent is responsible, or not responsible, for violating these Policies and Procedures;
- B. Sanction(s) if appropriate;
- C. Monitoring of academic or work schedules if needed between the involved;
- D. Short-term College counseling services available to each party.

If the Dean of Student Affairs and/or the Executive Director of Human Resources recommendations are not accepted by either the Complainant or the Respondent, both may appeal and request a formal hearing. If the Dean of Student Affairs and/or the Executive Director of Human Resources recommends sanctions that s/he cannot impose (i.e., suspension, expulsion/termination), the matter shall automatically be set for a hearing. The Complainant and the Respondent are allowed to be accompanied by an advocate. The advocate may not present on behalf of either party unless otherwise instructed to do so by the hearing officer. If the Complainant or the Respondent chooses to have an advocate who is an attorney, notification must be provided to the hearing officer at least three (3) College business days prior to the hearing date. In this case, the College Attorney will also be present.

## **SANCTIONS**

The following sanctions may be imposed for those who have violated these Policy and Procedures herein.

### For Students:

Conduct Warning (verbal or written)  
 Conduct Probation  
 Administrative withdrawal / Interim Conduct Suspension  
 Required Counseling  
 “No Contact Agreement”  
 Conduct Suspension  
 Expulsion

Other consequences as deemed appropriate

For Employees:

Verbal or Written Warning

Performance Improvement Plan

Required Counseling

Required Training or Education

Demotion

Suspend with or without Pay

Termination

Other consequences as deemed appropriate

Any student complaint or inquiries concerning discrimination or harassment may be reported to the Dean of Student Affairs. For more information, please refer to the CFCC Student Handbook, *Student Expectations, Rights and Responsibilities*.

Any employee complaint or inquiries concerning discrimination or harassment may be reported to CFCC Human Resources. For more information, please refer to the CFCC Faculty and Staff Handbook, 5.11, *Disciplinary and Grievance Policies and Procedures*.



## TITLE IX SEXUAL HARASSMENT POLICY & PROCEDURES

### INFORMATION

Cape Fear Community College (CFCC) is committed to providing a safe learning and working environment that promotes respect, responsibility, and accountability that is free of sexual misconduct, including discrimination, harassment, and/or sexual harassment. All forms violate an individual's fundamental right to CFCC's educational programs and activities.

In compliance with, and as required by Title IX of the Education Amendments Act of 1972: "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."

Title IX is a comprehensive federal law that prohibits discrimination on the basis of sex in any federally funded education program or activity. Under Title IX, "sexual harassment" includes *quid pro quo* harassment; sexual assault, dating or domestic violence; and stalking (collectively referred to as "sexual harassment"). If the unwelcome conduct is viewed by a reasonable person and/or complainant to be so "severe, pervasive, and objectively offensive" that it effectively denies a person equal access to CFCC's educational programs or activities, then it will be determined by the Title IX Coordinator whether the behavior constitutes as "Sexual Harassment" under CFCC's Sexual Harassment Policy and Procedures. The College's Title IX Coordinator has oversight responsibility for handling sexual harassment complaints and for identifying and addressing any patterns and/or systemic problems involving sexual discrimination or harassment.

CFCC considers discrimination and sexual harassment in all its forms to be a serious offense (Title 20 U.S.C. Sections 1681-1688). CFCC has a responsibility to ensure compliance by demonstrating that our educational programs and other activities are operated in a manner consistent with Title IX mandates, regulations and provisions. In response, Cape Fear Community College offers training on awareness and prevention efforts on an annual basis to its student body, and employees alike, to ensure proper guidance and ultimately to provide a safe and healthy learning and working environment.

All allegations involving sexual harassment should be directed to the College's Title IX Coordinator and addressed under these procedures. For complaints related to allegations of discrimination and harassment, not related to sexual harassment, please refer to CFCC's **Non-Discrimination and Harassment Policy and Procedures**.

### I. DEFINITIONS

The following definitions shall apply to this procedure. The definitions are not intended to operate as speech codes, promote content and viewpoint discrimination or suppress individual viewpoints in the academic setting. Indeed, just because a student's speech or expression is deemed offensive by others does not mean it constitutes discrimination or harassment. In applying these definitions, College administrators shall view the speech or expression in its context and totality. In the student due process hearing and employee grievance process, legal terms like "guilt," "innocence" and "burden of proof" are not applicable. Student and employee due process hearings are conducted to take into account the totality of all evidence available from all relevant sources. Under these proceedings, the college will adjudicate and resolve complaints either through informal resolution, or determine and initiate a formal complaint. The College will find the alleged perpetrator, or respondent, either "responsible" or "not responsible" for violating College policies and procedures. The College will apply the "preponderance of evidence standard", or "more likely than not", as the standard for proof of whether a violation occurred.

**A. Actual Knowledge** - "notice" of sexual harassment or allegations of sexual harassment to the CFCC Title IX Coordinator. Actual knowledge, or notice, is not met or satisfied, when only the individual with actual knowledge is the Respondent.

- B. Advisor** - a person chosen by a party or appointed by the institution to accompany the party to meetings related to the resolution process, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if any.
- C. Complainant** - an individual who is alleged to be the victim of conduct that could constitute sexual harassment.
- D. Consent** - explicit approval to engage in sexual activity demonstrated by clear actions or words. This decision must be made freely and actively by all participants. Non-verbal communication, silence, passivity or lack of active resistance does not imply consent. In addition, previous participation in sexual activity does not indicate current consent to participate and consent to one form of sexual activity does not imply consent to other forms of sexual activity. Consent has not been obtained in situations where the individual: i) is forced, pressured, manipulated or has reasonable fear that they will be injured if they do not submit to the act; ii) is incapable of giving consent or is prevented from resisting due to physical or mental incapacity (including being under the influence of drugs or alcohol); or iii) has a mental or physical disability which inhibits his/her ability to give consent to sexual activity.
- E. Dating Violence** - as defined in 34 U.S.C. § 12291(a)(10): 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; and (iii) the frequency of interaction between the persons involved in the relationship;
- F. Day** - a business day, unless otherwise specified.
- G. Decision-maker (Hearing Officer)** - those who have decision-making and sanctioning authority within the College's formal grievance process.
- H. Domestic Violence** - as defined in 34 U.S.C. § 12291(a)(8): 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 the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction; or
- I. Education Program or Activity** - for purposes of these Policy and Procedures, this means any locations, events, or circumstances over which the College exercised substantial control over both the Respondent(s) and the context in which the alleged sexual harassment occurs. It also means any building owned or controlled by a student organization that is officially recognized by the College.
- J. FERPA** - is the Family Educational Rights and Privacy Act, a federal statute codified at 20 U.S.C. § 1232g, with implementing regulations at 34 C.F.R. § 99. FERPA protects the privacy of student Education Records. FERPA grants to eligible students the right to access, inspect, and review Education Records, the right to challenge the content of Education Records, and the right to consent to the disclosure of Education Records. "Education Record" has the meaning assigned to it under FERPA.
- K. Formal Complaint** - a written document filed by a Complainant, or signed by the Title IX Coordinator, alleging sexual harassment against a Respondent and requesting the College to investigate the allegation(s). A formal complaint initiates a formal grievance process in which parties are entitled to due process protections.
- L. Informal Resolution** – a resolution reached regarding an allegation of sexual discrimination or harassment without the filing of a Formal Complaint, or when the Title IX Coordinator determines that the alleged complaint would not constitute as Sexual Harassment as defined in this Policy and/or Title IX. Informal Resolution may include mediation, dialogue, counseling, restorative justice, or other models of alternative dispute resolution. Informal Resolution cannot be used for a student's allegation of sexual harassment against a College employee.
- M. Investigator** - the person, or persons, charged by the College with gathering facts about an alleged violation of this policy, assessing relevance and credibility, reviewing the corroborating evidence, and compiling this information into an investigation report.

- N. **Notice** - an employee, student, or third-party whom informs (see “Reporting to College Officials”) the Title IX Coordinator of an alleged occurrence of discrimination or sexual harassment as defined herein.
- O. **Respondent** - an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
- P. **Retaliation** - to intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or because the individual has made a report or complaint, testified, assisted, participated, or refused to participate in any manner in an investigation, proceeding, or hearing under these Procedures.
- Q. **Sexual Assault** - as defined in 20 U.S.C. § 1092(f)(6)(A)(v): an offense classified as a forcible or non-forcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation (FBI) or an offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI’s Uniform Crime Reporting system.
- R. **Sexual Harassment** - *quid pro quo* harassment; sexual assault, dating violence, domestic violence, or stalking; unwelcome conduct that a reasonable person would find so “severe, pervasive, and objectively offensive” that it effectively denies a person equal access to the College’s education program or activity, including conduct based on sex stereotyping; or any instance of sexual assault, dating violence, domestic violence, or stalking. “Quid pro quo” harassment is a person having power or authority over another and conditioning an educational or employment benefit or service or access to receiving the educational or employment benefit or service upon a person’s participation in unwelcome sexual conduct.
- S. **Stalking** - as defined in 34 U.S.C. § 12291(a)(30): engaging in a course of conduct directed at a specific person that would cause a reasonable person to (A) fear for their safety or the safety of others; or (B) suffer substantial emotional distress.
- T. **Standard of Evidence** - the college will apply the “preponderance of evidence standard”, or “more likely than not”, as the standard for proof of whether a violation of this policy has occurred. In the student due process hearing and employee grievance process, legal terms like "guilt", "innocence" and "burden of proof" are not applicable. Student and employee due process hearings are conducted to take into account the totality of all evidence available from all relevant sources. The College will find the Respondent either "responsible" or "not responsible" for violating these Procedures.
- U. **Supportive Measures** - individualized services reasonably available that are non-punitive, non-disciplinary, and not unreasonably burdensome to the other party that are designed to ensure equal educational access, protect safety, or deter sexual harassment. Supportive measures may include, but are not limited to, counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual “no contact agreements” between the involved parties, leaves of absences, increased security and monitoring of certain areas of the College, and other actions deemed appropriate by the Title IX Coordinator.
- V. **Title IX Coordinator** - for purposes of these procedures, the Title IX Coordinator is the CFCC Dean of Student Affairs. The Title IX Coordinator will oversee and coordinate the College’s efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remediate, and prevent discrimination, harassment, and sexual harassment prohibited under this policy. The Title IX Coordinator acts with independence and authority free from bias and conflicts of interest. The Title IX Coordinator oversees all resolutions under this policy and these procedures.

## II. SCOPE AND APPLICABILITY

This policy and procedures only apply to allegations of sexual harassment made by a student, employee (currently employed) or third party that currently participates in CFCC educational programs or activities located within the United States, and of which the College has actual knowledge. A “student” is defined as an individual that is admitted, registered and/or enrolled and who maintains an ongoing relationship with the College. CFCC will adjudicate all other allegations or inappropriate conduct that do not meet the Title IX definition of sexual harassment, through its appropriate College disciplinary and/or grievance proceedings.

### III. REPORTING

#### A. Reporting to Local Law Enforcement

Individuals may report sexual harassment directly to local law enforcement agencies by dialing 911. Individuals who make a criminal allegation may also choose to pursue the College's grievance procedure simultaneously. A criminal investigation into the matter does not release the College from its obligation to conduct its own investigation (nor is a criminal investigation determinative of whether sexual harassment has occurred). However, the College's investigation may be delayed temporarily while the criminal investigators are gathering evidence. In the event of such a delay, the College must make available supportive measures when necessary to protect the alleged Complainant and/or the College community.

Individuals may choose not to report alleged sexual harassment to law enforcement authorities. The College respects and supports individuals' decisions regarding reporting; nevertheless, the College may notify appropriate law enforcement authorities if legally required or warranted by the nature of the allegations.

#### B. Reporting to College Officials

The College's Title IX Coordinator oversees compliance with these Procedures and Title IX regulations. Questions about these Procedures should be directed to the Title IX Coordinator. Anyone wishing to make a report relating to sexual harassment may do so by reporting the concern to the College's Title IX Coordinator in person, by mail, by telephone, by email, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report of alleged sexual harassment.

CFCC also provides [Online Reporting](https://cm.maxient.com/reportingform.php?CapeFearCC&layout_id=0) at the following link:  
[https://cm.maxient.com/reportingform.php?CapeFearCC&layout\\_id=0](https://cm.maxient.com/reportingform.php?CapeFearCC&layout_id=0)

#### C. Time Limits on Reporting

There is no time limitation on reporting complaints to the Title IX Coordinator. However, if the Respondent is no longer subject to the College's jurisdiction and/or a significant time period has passed, the ability to investigate, respond, and provide resolution may be limited.

#### D. Emergency Removal / Administrative Leave

The College may remove a respondent from its education program or activities on an emergency basis when the health and safety of the college community is threatened. This decision will be determined by the Title IX Coordinator, in conjunction with the Behavioral Intervention Team (BIT), and utilized when appropriate and justified. The respondent will be provided with notice and an opportunity to challenge the decision immediately following the removal, and when applicable, in accordance with the Individuals with Disabilities act, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act. Any violation of an emergency removal under this policy will be grounds for discipline, which may include expulsion or termination of employment.

### IV. GRIEVANCE PROCEDURES

#### A. Scope

1. Use of these grievance procedures applies to reports alleging sexual harassment carried out by employees, students, or third parties.
2. All reports of sexual harassment are taken seriously. At the same time, those accused of sexual harassment are presumed "not responsible" throughout this grievance procedure.

#### B. Initial Response, Determination and/ Dismissal

1. After receiving a report of sexual harassment, the Title IX Coordinator takes immediate and appropriate steps to:

- a. Communicate with the individual who reported the alleged conduct;
  - b. Implement supportive measures to eliminate and prevent the recurrence of sex harassment, deter retaliation, remedy the effects of sex harassment, and provide due process rights during a College investigation;
  - c. Provide the individual with a copy of this Policy and Procedure; and
  - d. Determine whether the alleged conduct, as described by the reporting party, falls within the scope of this policy and if so, initiate the investigation and resolution procedures outlined below.
2. The Title IX Coordinator must administratively close, or dismiss, a formal complaint of sexual harassment if after an initial assessment:
- a. The allegations as stated do not constitute a violation of this policy and procedure, even if proven; or
  - b. The alleged sexual harassment did not occur in the College's Education Program or Activity, or did not occur in the United States.
  - c. The Title IX Coordinator will notify the parties if a report or complaint of sexual harassment is closed under this section, including the reason(s) for closure, and direct the parties to the appropriate College office or department to resolve the report or complaint. All parties may appeal the Title IX Coordinator's dismissal of a Formal Complaint under this section by using the appeal procedures below.
3. The Title IX Coordinator may administratively close, or dismiss, a report or complaint of sexual harassment if:
- a. The Complainant, at any time, requests withdrawal of the report or complaint;
  - b. The Respondent is no longer enrolled or employed by the College; or
  - c. The College is prevented from gathering evidence sufficient to reach a determination of responsibility.
  - d. The Title IX Coordinator will notify the parties if a report or complaint of sexual harassment is closed under this section, including the reason(s) for closure, and direct the parties to the appropriate College office or department to resolve the report or complaint. All parties may appeal the Title IX Coordinator's dismissal of a Formal Complaint under this section by using the appeal procedures below.
4. Regardless of when alleged sexual harassment is reported, a Complainant must be participating in or attempting to participate in CFCC's educational programs or activities for a Formal Complaint to be filed.

### **C. Informal Resolution**

1. Any party may request the College facilitate an informal resolution to a sexual harassment complaint at any time after the filing of a Formal Complaint. The Title IX Coordinator may offer the parties the opportunity for informal resolution, too.
  - a. Upon a request for informal resolution, the Title IX Coordinator determines whether informal resolution is appropriate based on the facts and circumstances of the case. The Title IX

Coordinator ensures that any proposed informal resolution is consistent with the College's obligations to prevent and redress sexual harassment.

- b. A student's allegations of sexual harassment against a College employee are not eligible for informal resolution.
  - c. The Title IX Coordinator provides the parties with written notice of proceeding with an informal resolution, including the allegations of sexual harassment, the requirements of the informal resolution process, and potential outcomes resulting from participating in the informal resolution process.
  - d. The Title IX Coordinator also designates an independent, neutral person to facilitate the informal resolution.
2. Informal resolution is voluntary.
- a. The Complainant and Respondent must provide written consent for informal resolution to take place.
  - b. Any party has a right to end the informal resolution process at any time prior to agreeing to a resolution and begin or continue the formal investigation and grievance process.
3. Informal resolution concludes the matter only when all parties have signed a written agreement that confirms resolution of the allegations.
- a. The resolution agreement must include a waiver of the parties' right to have a formal hearing on the allegations that have been informally resolved.
  - b. Parties are prohibited from revoking or appealing a resolution agreement. Should the Respondent violate the terms of an informal resolution agreement, such violation will subject the Respondent to an investigation and the formal grievance process contained in this procedure.
4. If a resolution agreement is not reached, the College will continue with a formal investigation.

#### **D. Investigations**

1. The goal of a formal investigation is to reach a determination as to whether a Respondent has violated one or more College policies prohibiting sexual harassment and if so, remedy the effects of a violation.
  - a. The Title IX Coordinator may include possible violations of other College policies that contributed to, arose from, or are otherwise related to alleged violations of this Policy and Procedure in the scope of an investigation.
  - b. The Title IX Coordinator gives written notice to the Complainant and Respondent of the investigation, providing sufficient details to allow the parties to respond and prepare for initial interviews, including the identity of the parties involved (if known), the conduct alleged to be sexual harassment, the date and location of alleged incidents (if known), a statement that the Respondent is presumed not responsible and a determination of responsibility is made at the conclusion of the process, information regarding the parties' right to an advisor and the right to review evidence, and notice that the College prohibits knowingly making false statements or submitting false information during the grievance process.
  - c. The Title IX Coordinator designates an investigator to investigate the allegations of sexual harassment.

2. Parties to an investigation can expect a prompt, thorough, and equitable investigation of complaints, including the opportunity for parties to ask questions, present witnesses and provide information regarding the allegations.
3. Parties and witnesses should cooperate in the investigation process to the extent required by law and this policy.
4. The college will use the “preponderance of evidence standard”, or “more likely than not”, as the standard for proof during its investigation and to whether a violation of this policy has occurred. It is the College’s responsibility to establish the standard of proof and gather evidence during investigations.
5. The College aims to bring all investigations to a resolution within thirty (30) business days from the date the Title IX Coordinator determines an investigation will commence.
  - a. Extensions of timeframe for good cause are allowed, so long as written notice and the reason for the delay is provided to the parties. Good cause includes:
    - i. The complexity and/or number of the allegations;
    - ii. The severity and extent of the alleged misconduct;
    - iii. The number of parties, witnesses, and other types of evidence involved;
    - iv. The availability of the parties, witnesses, and evidence;
    - v. A request by a party to delay an investigation;
    - vi. The effect of a concurrent criminal investigation or proceeding;
    - vii. Intervening holidays, College breaks, or other closures;
    - viii. Good faith efforts to reach a resolution; or
    - ix. Other unforeseen circumstances.
  - b. Investigations typically include interviews with the Complainant, the Respondent, and any witnesses, and the objective evaluation of any physical, documentary, or other evidence as appropriate and available. The College will give the Complainant and the Respondent written notice of any interview, meeting, or hearing at which a party is invited or expected to participate.
  - c. The Title IX Coordinator will inform the Complainant and Respondent at regular intervals of the status of its investigation.
  - d. The College may suspend or place on administrative leave a student or employee, pending the completion of an investigation and resolution, when the College performs an individualized safety and risk analysis and determines the person poses an immediate threat to the physical health or safety of any member(s) of the College community.
    - i. The Title IX Coordinator may recommend to the appropriate College official to implement or stay an interim suspension of a student or employee and the conditions and duration of such suspension or leave.
    - ii. In all cases in which an interim suspension or administrative leave is imposed, the student or employee shall be given notice and an opportunity to challenge the removal decision immediately following the removal.
    - iii. Violation of an interim suspension under this Procedure is grounds for expulsion or termination.
6. Interviews conducted as part of an investigation under this Procedure may be recorded by the College. Recordings not authorized by the College are prohibited.

7. The Complainant and Respondent have the right to be accompanied by an advisor of their choosing during all stages of an investigation.
  - a. A party may elect to change advisors during the process.
  - b. All advisors are subject to the same rules:
    - i. During the investigation, the advisor's role is limited to providing advice, guidance, and support to the Complainant or Respondent. An advisor is not permitted to act as a participant or advocate during the investigative process.
    - ii. Advisors are expected to maintain the privacy of the records shared with them.
    - iii. Advisors are expected to refrain from interfering with investigations.
    - iv. Any advisor who oversteps their role or interferes during an investigation process will be warned once. If the advisor continues to disrupt or otherwise fails to respect the limits of the advisor role, the advisor will be asked to leave. The Title IX Coordinator determines whether the advisor may return or should be replaced by a different advisor.
  
8. Prior to finalizing a report, the investigator provides all parties an equal opportunity to review any evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including evidence upon which the College does not intend to rely.
  - a. The Complainant and Respondent may submit a written response to the evidence within ten days after receipt of the evidence.
    - i. Responses must be submitted to the investigator via email, mail, or hand delivery by 5:00 p.m. eastern standard time on the date responses are due.
    - ii. Responses may not exceed 10 double-spaced pages on 8.5x11 paper with one-inch margins and 12-point font.
  - b. The investigator considers any responses received from the parties and conducts any further investigation necessary or appropriate.
  
9. Following an investigation and at least 10 days prior to a grievance hearing, the investigator submits an investigative report to the parties that fairly summarizes relevant evidence. The report includes a summary of the allegations; a summary of the response; a summary of the investigative steps taken to verify the allegations and response; and a summary of the evidence relevant to a determination of responsibility.

## V. GRIEVANCE HEARINGS

At least 10 days after the issuance of an investigation report, the College must hold a live hearing in front of a decision-maker (hearing officer) to determine responsibility of a Respondent. The decision-maker may not be the Title IX Coordinator or the investigator(s). A "live hearing" means either in person or virtually. The following hearing rules apply:

- A. All parties must be able to see and hear the questioning of parties and witnesses.
- B. Any party may request a virtual hearing. If requested, the College will provide a virtual hearing.
- C. All parties have an equal opportunity to present witnesses, including fact and expert witnesses.
- D. The parties' advisors are permitted to cross-examine the parties and any witnesses.
  1. The parties are prohibited from directly conducting cross-examination. Cross-examination must be conducted by a party's advisor.

2. The decision-maker determines whether questions asked during cross-examination are relevant to the determination of responsibility. If the decision-maker disallows a question, they will explain the basis for their decision at the hearing. Parties and advisors may not challenge a decision-maker's relevancy determinations during the hearing.
  3. Evidence or questions that inquire about the Complainant's sexual predisposition or prior sexual history are prohibited (i.e. rape-shield protections) unless such questions and evidence are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.
  4. The decision-maker may not consider statements of individuals who do not submit to cross-examination in reaching a determination of responsibility
  5. Records with a legally recognized privilege, such as medical treatment records, may not be used unless the individual or entity who holds the privilege waives the privilege. Any waiver must be written and made in advance of a hearing.
  6. If a party does not have an advisor, the College will provide an advisor at no cost to the party. The advisor may, or may not, be an attorney.
  7. Other standard Rules of Evidence do not apply in grievance hearings under these Procedures.
- E. The College will provide either an audio recording, audiovisual recording, or transcript of the hearing to all parties.
- F. The decision-maker evaluates all relevant evidence and reaches a determination regarding responsibility. The decision-maker issues their final written determination to all parties within ten (10) days of the hearing. The final written determination includes a summary of the allegations; a description of the procedural steps taken by the College to investigate and reach a determination of responsibility; findings of fact supporting the determination; conclusions regarding the application of College policies to the facts; a statement of and rationale for the result as to each allegation, including a determination of responsibility; any disciplinary sanctions the College recommends or imposes; whether remedies designed to restore or preserve equal access to an education program or activity will be provided to the Complainant; and the College's appeal procedures.
- G. The following sanctions may be imposed for those who have violated these Procedures:
1. Students
    - a. Conduct Warning (Verbal or Written)
    - b. Conduct Probation
    - c. Administrative withdrawal / Interim Conduct Suspension
    - d. Required Counseling
    - e. "No Contact Agreement" Directive
    - f. Conduct Suspension
    - g. Expulsion
    - h. Other consequences deemed appropriate
  2. Employees
    - a. Verbal or Written Warning
    - b. Performance Improvement Plan
    - c. Required Counseling
    - d. Required Training or Education
    - e. Recommendation of Demotion
    - f. Recommendation to Suspend with, or without Pay

- g. Recommendation of Dismissal and/or Termination
- h. Other consequences deemed appropriate to the specific violation

If the decision-maker is required to make a recommendation for student expulsion or employee suspension, demotion or dismissal/termination, such recommendation will be made to the appropriate College official after the time for appeal has expired. If the decision-maker recommends the Respondent be expelled, suspended, demoted, or dismissed/terminated, during the time in which either party has to appeal, the Respondent shall remain on suspension unless otherwise determined by the decision-maker.

## **VI. APPEALS**

After the decision-maker submits their determination of responsibility to the Complainant and Respondent, all parties are given an equal opportunity to appeal the determination. Appeals may be based only on these grounds:

- A. Procedural irregularity that affected the outcome;
- B. New evidence that was not reasonably available at the time of the hearing that could affect the outcome; and/or
- C. The Title IX Coordinator, investigator, or decision-maker had a bias or conflict of interest that affected the outcome.

Parties must submit any appeal to the President of the College by 5:00 p.m. eastern standard time via email or mail, within ten (10) days of receiving the decision-maker's written determination of responsibility. Appeals may not exceed ten (10) double-spaced pages on 8.5x11 paper with one-inch margins and 12-point font.

The College notifies all parties when an appeal is filed and provides all parties a copy of the appeal and a chance to submit a written statement supporting or challenging the outcome. Parties must submit written statements supporting or challenging the outcome to the President of the College by 5:00 p.m. eastern standard time via email or mail, within two (2) days of receiving a copy of an appeal.

The President shall conduct a review of the record, including the appeal(s) received, any written statements supporting or challenging the outcome, the investigation report, the decision-maker's written determination of responsibility, and any accompanying evidence prior to issuing a written decision to the Complainant and Respondent that describes the result of the appeal and the rationale for the result. The President's written decision is final.

## **VII. RETALIATION**

The college strictly prohibits retaliation against any person for reporting, testifying, assisting or participating, in any manner, in any investigation or proceeding involving allegations of discrimination or sexual harassment. Any person who violates this policy will be subject to discipline, up to and including termination if they are an employee, and/or expulsion if they are a student. Retaliation is any action by any person that is perceived as: intimidating, hostile, harassing, a form of retribution, or violence that occurs in connection to reporting an incident and/or participating in the adjudication process. The College will not in any way retaliate against an individual for the purpose of interfering with any right or privilege secured by Title IX or because the individual has made a report or complaint, testified, assisted, participated, or refused to participate in any manner in an investigation, proceeding, or hearing under these procedures. Retaliation is a violation of College policy regardless of whether the underlying allegations are ultimately found to have merit. Reports of retaliation are treated separately from reports or complaints of sexual harassment.

## **VIII. PROVIDING FALSE INFORMATION**

Any individual who knowingly files a false report or complaint, who knowingly provides false information to College officials or who knowingly misleads College officials involved in the investigation or resolution of a complaint may be subject to disciplinary action, including but not limited to expulsion or employment termination.

The College recognizes a determination regarding responsibility alone is not sufficient to conclude a false report or complaint was made.

## **IX. LIMITED IMMUNITY**

The College community encourages the reporting of misconduct and crimes. Sometimes, complainants or witnesses are hesitant to report to College officials or participate in resolution processes because they fear they themselves may be accused of various policy violations. It is in the best interest of this College that as many complainants as possible choose to report to College officials and that witnesses come forward to share what they know. To encourage reporting, the College offers sexual harassment complainants and witnesses amnesty from minor policy violations.

## **X. AMNESTY**

CFCC considers the reporting and adjudication of Sexual Harassment to be of utmost importance. CFCC does not condone underage drinking or the use of illegal drugs; however, CFCC may extend amnesty to complainants, respondents, witnesses, and others involved in a grievance process from punitive sanctioning for illegal use of drugs and/or alcohol when evidence of such use is discovered or submitted in the course of a grievance process. Similarly, CFCC may, in its discretion, provide amnesty for other conduct code violations that are discovered in the course of a grievance process.

## **XI. FERPA (Family Educational Rights and Privacy Act)**

A student's personally identifiable information found in a student's education records will be shared only with College employees who need to know to assist with the College's response to sexual harassment.

A student's personally identifiable information found in a student's education records will not be disclosed to third parties unaffiliated with the College unless:

- A. The student gives consent;
- B. The College must respond to a lawfully issued subpoena or court order; or
- C. The College is otherwise required by law to disclose.

## **XII. SUSPENDING PROCEDURES**

In cases of emergency or serious misconduct, the College reserves the right to suspend this process and may enact appropriate action for the welfare and safety of the College community.

## **XIII. STUDENT AND EMPLOYEE EDUCATION AND ANNUAL TRAINING**

CFCC offers training and educational opportunities to all current students and employees to create a safe learning environment and workplace free from sex discrimination and/or harassment. All new students and all current employees will be offered SafeColleges primary prevention and awareness programs that may safeguard against acts of sex discrimination or harassment. These programs will be held annually at the beginning of each semester.

CFCC has partnered with SafeColleges for general Title IX and Sex Discrimination and Harassment Training. SafeColleges is a federally registered trademark of Vector Solutions, and all training material is copyrighted. For inquiries or access to training materials, please contact [support@safecolleges.com](mailto:support@safecolleges.com).

In addition, the Title IX Coordinator and those individuals involved in resolving Title IX related complaints participate in additional extensive training specifically for Title IX.

**Additional training(s) provided by: Association of Title IX Administrators (ATIXA):**  
<https://atixa.org/2020-regulations-requirement-posting-of-training-materials/>

#### **XIV. RECORDS**

All informal resolutions will not be included in the respondent's permanent educational record or noted on an official transcript, or included in an employee's personnel record, however, if appropriate, may be kept on file as a student code of conduct incident. The College will retain a record of Title IX formal resolutions and outcomes for no less than seven years.

*Revised 8.14.2020*

*Pending Approval*