



## *Administrative Policy*

<b>Policy Title:</b>	Title IX: Prohibition of Sexual Harassment		
<b>Policy Category:</b>	Ethics, Legal & Compliance		
<b>Related Procedure(s)/ Guideline(s):</b>			
<b>Policy Owner:</b>	Title IX Coordinator		
<b>Date Approved:</b>	9.13.22		
<b>Review Dates:</b>		<b>Revision Dates:</b>	
<b>Policy Scope:</b>	Employees, Public, Students		
<b>Policy Statement:</b>	<p><b>NOTICE OF NON-DISCRIMINATION</b>  Southwest Wisconsin Technical College (SWTC) prohibits all forms of discrimination against students, employees, and other persons in all aspects of the College's programs, activities and operations, based on sex, race, religion, national origin (including persons whose primary language is not English), ancestry, creed, pregnancy, marital or parental status, sexual orientation, gender expression, gender identity, gender non-conformity, physical, mental, emotional or learning disability.</p> <p><b><u>Statement Regarding Sex Discrimination under Title IX</u></b>  As mandated by the federal Title IX statutes and under the regulations set forth in Part 106 of Title 34 of the Code of Federal Regulations, the College does not unlawfully discriminate on the basis of sex in any educational program or activity that the College operates. Title IX's mandate not to discriminate on the basis of sex extends to students, employees, and other persons in all aspects of the College's programs, activities, and operations. Inquiries regarding how Title IX applies to the College may be referred to the College Title IX Coordinator (contact information below), to the Assistant Secretary at the U.S. Department of Education Office for Civil Rights, or to both.</p>		

**SCOPE OF POLICY****Sexual Harassment under Title IX**

This policy prohibits sexual harassment (which includes sexual assault, dating violence, domestic violence and stalking) under Title IX in all programs, activities, and operations of the College. Individuals who engage in such acts are in violation of this policy and are subject to disciplinary action. This policy also prohibits retaliation against individuals who report sexual harassment, who assist others in reporting, or who participate in College proceedings related to such a report. Individuals who engage in retaliation are subject to disciplinary action.

When the College has actual knowledge of sexual harassment under Title IX in an education program, activity, or operation of the College against an individual, including a student or employee, in the United States, the College shall respond promptly in a manner that is not deliberately indifferent.

The College has jurisdiction over Title IX sexual harassment complaints regarding conduct that occurs at locations, events, or circumstances over which the College exercises substantial control over both the individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment under Title IX and the context in which the sexual harassment occurred. This may include conduct that occurs on and off campus but in no case includes conduct against an individual outside the United States. If the alleged conduct does not constitute sexual harassment under Title IX, the College may address the conduct under other policies or codes of conduct.

**All Other Unlawful Discrimination**

This policy and the grievance process herein apply only to complaints alleging sexual harassment under Title IX. All other complaints involving discrimination based on any other legally protected status including race, color, national origin, disability, religion, sex (other than sexual harassment under Title IX), pregnancy, and age, are addressed in other policies of the College.

**TITLE IX COORDINATORS**

Pursuant to Title IX of the Educational Amendments of 1972 and 34 C.F.R. Part 106, the SWTC Title IX Coordinators are the designated College representatives with primary responsibility for coordinating College Title IX compliance efforts, including the College's efforts to coordinate the effective implementation of supportive measures, investigate the occurrence, end sexual harassment, prevent its recurrence, and remedy its effects. The responsibilities of this position are critical to the advancement, implementation, and monitoring of College-wide efforts to comply with Title IX legislation, regulation, and case law. The Title IX Coordinators are the College representatives who are charged with the responsibility to oversee and monitor Title IX related policies and developments; the oversight of complaint processes and procedures; the provision of educational materials

and training for the campus community; conducting and/or coordinating investigations of complaints received pursuant to Title IX; ensuring a fair and neutral process for all parties; and monitoring all other aspects of the College's Title IX compliance. The Title IX Coordinators may work with other College employees in carrying out their duties under Title IX.

The Title IX Coordinators designated below have been authorized to coordinate and oversee the College's compliance with Title IX:

**Title IX Coordinator:**

Krista Weber, Chief Human Resources Officer  
[kweber@swtc.edu](mailto:kweber@swtc.edu)  
(608) 822-2315

**Deputy Title IX Coordinators:**

Holly Clendenen, Chief Student Services Officer  
[hclendenen@swtc.edu](mailto:hclendenen@swtc.edu)  
608-822-2362

Dan Imhoff, Executive Director of Facilities, Safety, and Security  
[dimhoff@swtc.edu](mailto:dimhoff@swtc.edu)  
608-822-2401

If the designated Title IX Coordinator is unavailable, disqualified by bias, or otherwise unable to perform this duty, the individual should contact one of the above Deputy Title IX Coordinators. The individual may also contact the U.S. Department of Education's Office for Civil Rights, which can be reached in person or by mail at Citigroup Center, 500 W. Madison Street, Suite 1475, Chicago, IL 60661-4544, by phone at 312-730-1560 or TDD 877-521-2172, or by email at [OCR.Chicago@ed.gov](mailto:OCR.Chicago@ed.gov) or the Educational Opportunities Section of the Civil Rights Division of the U.S. Department of Justice (DOJ): <http://www.justice.gov/crt/complaint/#three>

**DEFINITIONS**

**Definition of Sexual Harassment under Title IX**

**"Sexual harassment"** under Title IX means conduct on the basis of sex that satisfies one or more of the following:

- (1) An employee of the College conditioning the provision of an aid, benefit, or service of the College on an individual's participation in unwelcome sexual conduct;
- (2) Unwelcome conduct that is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the College's education program or activity; or

(3) **Sexual assault**, as defined in 20 U.S.C. § 1092(f)(6)(A)(v), **dating violence**, as defined in 34 U.S.C. § 12291(a)(10), **domestic violence**, as defined in 34 U.S.C. § 12291(a)(8), or **stalking**, as defined in 34 U.S.C. § 12291(a)(30).

“**Sexual assault**” under 20 U.S.C. § 1092(f)(6)(A)(v), means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation, including but not limited to rape, sexual assault with an object, and groping.

Sexual assault includes, but is not limited to:

- a. Intentional touching of another person’s intimate parts without that person’s consent; or
- b. Other intentional sexual contact with another person without that person’s consent; or
- c. Coercing, forcing, or attempting to coerce or force a person to touch another person’s intimate parts without that person’s consent; or
- d. Rape, which is penetration, no matter how slight, of (1) the vagina or anus of a person by any body part of another person or by an object, or (2) the mouth of a person by a sex organ of another person, without that person’s consent.

“**Dating violence**” under 34 U.S.C. § 12291(a)(10) means violence committed by a person:

- (1) Who is or has been in a social relationship of a romantic or intimate nature with the Complainant; and
- (2) Where the existence of such a relationship shall be determined based on the reporting party’s statement and a consideration of the following factors:
  - a. the length of the relationship;
  - b. the type of relationship; and
  - c. the frequency of interaction between the persons involved in the relationship.

Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

“**Domestic violence**” under 34 U.S.C. § 12291(a)(8) includes but is not limited to felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the Complainant, by a person with whom the Complainant shares a child in common, by a person who is cohabitating with or has cohabitated with the Complainant as a spouse or intimate partner, by a person similarly situated to a spouse of the Complainant 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.

While not exhaustive, the following are examples of conduct that can constitute domestic violence: (1) physical harm, bodily injury or assault; (2) the infliction of fear of imminent physical harm, bodily injury, or assault; or (3) terroristic threats, criminal sexual conduct, or interference with an emergency call.

**“Stalking”** under 34 U.S.C. § 12291(a)(30) means engaging in conduct directed at a specific person that would cause a safe reasonable person to fear for his or her or the safety of others or to suffer substantial emotional distress.

Examples include acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person’s property. Stalking behavior includes, but is not limited to:

- a. Repeated, unwanted, intrusive, or frightening communications by phone, mail, text, email and/or social media;
- b. Repeatedly leaving or sending an individual unwanted items, presents, or flowers;
- c. Following or lying in wait for an individual at places such as home, school, work, or recreation place;
- d. Making direct or indirect threats to harm an individual, an individual’s children, relatives, friends, or pets;
- e. Damaging or threatening to damage an individual’s property;
- f. Posting information or spreading rumors about an individual on the internet, in a Campus place, or by word of mouth; or
- g. Unreasonably obtaining personal information about an individual by accessing Campus records, using internet search services, hiring private investigators, going through an individual’s garbage, following an individual, contacting an individual’s friends, family, work, or neighbors, etc.

#### **Other Definitions Applicable To This Policy**

**“Actual knowledge”** means notice of sexual harassment or allegations of sexual harassment under Title IX to (1) the College’s Title IX Coordinator; or (2) any officials of the College who have authority to institute corrective measures on behalf of the College. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. This standard is not met when the only official of the College with actual knowledge is the alleged perpetrator. The mere ability or obligation to report sexual harassment or to inform a student about how to report sexual harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of the College. “Notice” as used in this paragraph includes, but is not limited to, a report of sexual harassment to the Title IX Coordinator.

**“Complainant”** means the individual who is alleged to have been the victim of sexual harassment.

**“Consent”** means words or overt actions by a person who is competent to give informed consent indicating a freely given agreement to have sexual intercourse or sexual contact. The following persons are presumed incapable of consent: a person suffering from a mental illness or defect which impairs capacity to appraise personal conduct, and a person who is unconscious or for any other reason is physically unable to communicate unwillingness to an act.

There is no consent when there is force, expressed or implied, or when coercion, intimidation, threats, or duress are used. Whether a person has taken advantage of a position of influence over another person may be a factor in determining consent.

- a. Silence or absence of resistance does not imply consent.
- b. Past consent to sexual activity with another person does not imply ongoing future consent with that person or consent to that same sexual activity with another person.
- c. If a person is mentally or physically incapacitated or impaired so that such person cannot understand the fact, nature, or extent of the sexual situation, there is no consent; this includes impairment or incapacitation due to alcohol or drug consumption that meets this standard, or being asleep or unconscious.

There are inherent risks in any romantic or sexual relationship between individuals in unequal positions (such as teacher and student, supervisor and employee). These relationships may be less consensual than perceived by the individual whose position confers power. The relationship also may be viewed in different ways by each of the parties, particularly in retrospect.

Furthermore, circumstances may change, and conduct that was previously welcome may become unwelcome. Even when both parties have consented at the outset to a romantic or sexual involvement, this past consent may not remove grounds for a later charge of a violation of applicable sections of the faculty/staff handbooks.

Southwest Tech does not wish to interfere with private choices regarding personal relationships when these relationships do not interfere with the goals and policies of Southwest Tech. For the personal protection of members of this community, relationships in which power differentials are inherent (faculty-student, staff-student, administrator-student) are generally discouraged.

Consensual romantic or sexual relationships in which one party maintains a direct supervisory or evaluative role over the other party are unethical and prohibited as a condition of employment at the College. Therefore, persons with direct supervisory or evaluative responsibilities who are involved in

such relationships must bring those relationships to the timely attention of their supervisor. This will result in the necessity to remove the employee from the supervisory or evaluative responsibilities, or shift the student out of being supervised or evaluated by someone with whom they have established a consensual relationship. This includes Resident Assistants and students over whom they have direct responsibility.

While no relationships are prohibited by this policy, failure to self-report such relationships to a supervisor as required can result in disciplinary action for an employee.

**“Day”** when used in this policy means a business day and does not include Saturday, Sunday, legal holidays, or days the College is closed.

**“Education program or activity”** includes locations, events, or circumstances over which the College exercised substantial control over both the individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment under Title IX and the context in which the sexual harassment occurred. This definition does not include education programs or activities that occur outside the United States.

**“Exculpatory Evidence”** is evidence that tends to clear or excuse a Respondent from allegations of sexual harassment.

**“Formal Complaint”** means a 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 of sexual harassment. At the time a Formal Complaint is filed (either by the Complainant or guardian, or the Title IX Coordinator), the named Complainant must be participating in or attempting to participate in the education program or activity of the College.

**“Inculpatory Evidence”** is evidence that tends to establish a Respondent’s responsibility for alleged sexual harassment.

**“Preponderance of the Evidence”** is the standard applied by the decision-maker under the grievance process in this policy and means that there is sufficient relevant evidence for the decision-maker to find that the Respondent has more likely than not engaged in conduct that violates this policy.

**“Report”** means a written or verbal communication in person or via electronic communication, U.S. mail, facsimile, voicemail or telephone made by any person for the purpose of providing information about alleged sexual harassment under Title IX. The grievance procedure is triggered only when a report is made or provided to the Title IX Coordinator or an individual who has authority to institute corrective measures on behalf of the College. A

report of sexual harassment does not constitute a Formal Complaint under the grievance process in this policy.

**“Respondent”** means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

**“Supportive measures”** means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. Such measures are designed to restore or preserve equal access to the College’s education program or activity without unreasonably burdening the other party, while protecting the safety of all parties and the College’s educational environment; and deterring sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

#### **REQUIRED NOTICES**

The College shall display the following notice on its website and in each handbook or catalog provided to applicants for admission and employment, students, parents or legal guardians, College employees, and all unions or professional organizations holding collective bargaining or professional agreements with the Board:

#### **Notice of Nondiscrimination under Title IX of the Education Amendments of 1972**

Southwest Wisconsin Technical College (SWTC) does not unlawfully discriminate on the basis of sex in any education program or activity that the College operates. Title IX’s mandate not to discriminate on the basis of sex extends to students, employees, and other persons in all aspects of the College’s programs, activities, and operations. Inquiries regarding how Title IX applies to the College may be referred to the College Title IX Coordinator (contact information below), to the Assistant Secretary at the U.S. Department of Education, or to both.

#### **The Title IX Coordinator:**

Krista Weber, Chief Human Resources Officer  
[kweber@swtc.edu](mailto:kweber@swtc.edu)  
(608) 822-2315  
Building 300, Room 319

#### **Deputy Title IX Coordinators:**

Holly Clendenen, Chief Student Services Officer  
[hclendenen@swtc.edu](mailto:hclendenen@swtc.edu)  
608-822-2362  
Building 400, Room 480

Dan Imhoff, Executive Director of Facilities, Safety, & Security  
[dimhoff@swtc.edu](mailto:dimhoff@swtc.edu)  
608-822-2401  
Building 500, Room 514

The College has adopted a [grievance procedure and process](#) that provide for the prompt and equitable resolution of student and employee complaints alleging any action that is prohibited by Title IX and/or its implementing regulations. The policy below addresses how to report or file a Formal Complaint of Sexual Harassment, and how the College will respond.

All complaints of discrimination based on a protected class (including sex), other than complaints of sexual harassment under Title IX, will be processed in accordance with the Non-Discrimination Policy and Grievance Procedure below.

<https://www.swtc.edu/uploadedpdfs/about/policies/Non-Discrimination%20&%20Grievance%20Procedures.pdf>

This notice will be provided to applicants for admission and employment; students and parents; employees; and unions or professional organizations holding collective bargaining or professional agreements.

### **Training**

Title IX requires all institutions to publish materials used for training Title IX coordinators, investigators, decision makers, and persons who facilitate informal resolutions on the institution's website or make these materials available upon request for inspection by members of the public. Please see below for links to the training our Title IX team has received. In addition, please know that our Title IX team continues to update its training as the law evolves.

- D. Stafford & Associates Title IX Coordinator Training Class
- D. Stafford & Associates Title IX Coordinator and Investigator Training Class
- D. Stafford & Associates Investigator Training Class
- D. Stafford & Associates Title IX Designated Reporters Online Course
- D. Stafford & Associates Violence Against Women Act (VAWA) Online Course
- D. Stafford & Associates Campus Security Authorities Online Course

Online Link: [Welcome - Southwest Wisconsin Technical College \(dialogedu.com\)](#)

Contact Campus Safety & Security at [security@swtc.edu](mailto:security@swtc.edu) to request access to training materials.

### **REPORT OF SEXUAL HARASSMENT UNDER TITLE IX**

Any official of the College who has authority to institute corrective measures with actual knowledge of sexual harassment under Title IX **shall** immediately report sexual harassment to the Title IX Coordinator or Deputy Title IX Coordinators.

Mandatory Reporting: All Southwest Tech employees are considered responsible employees and are expected to report actual or suspected harassment to appropriate officials, including the the Title IX Coordinator or Deputy Title IX Coordinator, though there are some limited exceptions. On campus, the Mental Health Counselor may maintain confidentiality - meaning they are not required to report actual or suspected harassment to appropriate Southwest Tech officials. This employee will maintain confidentiality except in extreme cases of immediacy of threat or danger or abuse of a minor. Employees must share all details of the reports they receive.

In the event that the sexual harassment involves conduct by the Title IX Coordinator, the report should be made to one of the Deputy Title IX Coordinators listed above.

Failure of an employee to report an incident or incidents of sex or gender harassment of which they become aware, is a violation of Southwest Tech policy and is subject to disciplinary action ranging from a warning up to and including termination of employment.

Any person (including a person not alleged to be the victim of sexual harassment) **may** report sexual harassment at any time, including during non-business hours, to the Title IX Coordinator or Deputy Title IX Coordinators by mail, by telephone, by electronic mail, by the Southwest Tech Complaints Reporting Form, or by any other means that results in the Title IX Coordinator or Deputy Title IX Coordinators receiving the person's verbal or written report. Reports may be made orally or may be in writing. The report should identify the alleged victim, perpetrator, and witnesses, and describe the sexual harassment in detail including date, time, and location.

The designation of an individual as a Campus Security Authority (CSA) under the Clery Act does not denote an individual as an "official who has authority to institute corrective measures" under Title IX.

### **CONFIDENTIALITY**

The College shall keep confidential the identity of any person who has made a report or complaint of sexual harassment under Title IX, any Complainant, any individual who has been reported to be the perpetrator of sexual harassment, any Respondent, and any witness, except as may be permitted by the Family Educational Rights and Privacy Act ("FERPA"), as required by law, or to carry out the purposes of this Policy or Title IX, including the

conduct of any investigation, hearing, or judicial proceeding arising under Title IX.

The College may not access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional and which are made and maintained in connection with the provision of treatment to the party, unless the College obtains the voluntary written consent of the party or the party's parent or guardian.

### **INITIAL RESPONSE TO REPORT OF SEXUAL HARASSMENT UNDER TITLE IX**

In responding to a report of sexual harassment, the Title IX Coordinator may consider whether the allegations constitute discrimination or harassment under another state or federal law or a violation of the College's policies or code of conduct, and whether a concurrent investigation should continue under a different policy. Unless required by law, the process in this policy shall provide required due process under state or federal law if the process herein is utilized.

The College will treat Complainants and Respondents equitably by offering supportive measures and by following a grievance process that complies with Title IX before the imposition of any disciplinary sanctions or other actions that are not supportive measures as against a Respondent.

When the College is required to provide notice to parties identified in the grievance process, notice shall be acceptable if it is in writing and delivered to the parties and advisors: (a) In person by the Title IX Coordinator or designee; (b) U.S. mail to the local or permanent address of the individual as indicated in official College records; or (c) Email to the individual's College-issued email account. Notice via email will be presumed received when sent. In all other circumstances, the parties must confirm receipt to the Title IX Coordinator within three (3) business days. A Respondent who fails to confirm receipt of a notice of outcome as required herein, may be subject to disciplinary sanctions.

#### **Supportive Measures**

When the Title IX Coordinator or Deputy Coordinator determines that the College has actual knowledge of sexual harassment under Title IX, the Title IX Coordinator or Deputy Coordinator will respond promptly (generally within five (5) business days) in a manner that is not deliberately indifferent. Initially, the Title IX Coordinator or Deputy Coordinator will:

1. Contact the Complainant (individual alleged to be the victim of sexual harassment) to (a) discuss the availability of supportive measures; (b) consider the Complainant's wishes with respect to supportive

measures and inform the Complainant of the availability of supportive measures with or without filing a Formal Complaint; and (c) explain to the Complainant the process for filing a Formal Complaint.

2. Determine appropriate supportive measures and coordinate with appropriate administration to provide supportive services to the Complainant.
3. Document the provision of supportive measures or if supportive measures are not provided, document the reasons why such response was not clearly unreasonable in light of the known circumstances.

The College must maintain as confidential any supportive measures provided to the Complainant to the extent that maintaining such confidentiality would not impair the ability of the College to provide the supportive measures.

### **Emergency Removal/Administrative Leave**

**Emergency Removal of a Student.** Upon receipt of actual notice, the Title IX Coordinator or Deputy Coordinator (in consultation with College administration) may consider whether a Respondent should be removed from the education program, activity, or operation of the College on an emergency basis. Before any emergency removal is permitted, the College shall:

1. Undertake an individualized safety and risk analysis,
2. Determine that an immediate threat to the health or safety of students or other individual justifies removal; and
3. Provide Respondent notice of the removal and of the opportunity to challenge the decision by submitting a written statement challenging the decision and the reasons therefore, to the Title IX Coordinator or Deputy Coordinator within twenty-four (24) hours following the removal.

**Administrative Leave of an Employee.** The College may place a non-student employee Respondent on administrative leave, including during the pendency of a grievance process.

The College shall comply with any applicable requirements under Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act when removing a Respondent from the education program, activity, or operation or placing a Respondent on administrative leave.

### **FORMAL COMPLAINT**

#### **Complainant May File a Formal Complaint**

1. A Complainant may file a Formal Complaint with the Title IX Coordinator or Deputy Title IX Coordinator in person, by mail, by electronic mail, by using the contact information for the Title IX Coordinator, or by any additional method designated by the College.

2. A document filed by a Complainant means a document or electronic submission that contains the Complainant's physical or digital signature or otherwise indicates that the Complainant, or a guardian acting on behalf of a Complainant, is the person filing the Formal Complaint. If the College receives a Formal Complaint, the College must follow the grievance process below.

#### **Title IX Coordinator May Sign a Formal Complaint**

1. If a Complainant chooses not to file a Formal Complaint, the Title IX Coordinator or Deputy Title IX Coordinator may engage in a determination of whether to sign a Formal Complaint. This determination may not be delegated to any other individual.
2. In making this determination, the Title IX Coordinator shall consult with other College administration as deemed necessary or appropriate, and consider whether the College's interest in the safety of others as well as potential disciplinary sanctions against the Respondent, warrants signing by the Title IX Coordinator.
3. The Title IX Coordinator may not sign a Formal Complaint against the wishes of the Complainant if involving the Complainant in the grievance process would be clearly unreasonable in light of the known circumstances.
4. Upon signing the Formal Complaint, the Title IX Coordinator does not become a Complainant or party to the Formal Complaint.

#### **Dismissal of Formal Complaint**

Upon receipt of a Formal Complaint or if appropriate, at other points in the grievance process, the College must determine whether a Formal Complaint should be dismissed pursuant to the following provisions. The dismissal of a complaint is appealable to the extent allowed by this policy.

1. **Mandatory** Dismissal. The College must dismiss a Formal Complaint if the conduct alleged:
  - a. Would not constitute sexual harassment as defined under Title IX even if proved;
  - b. Did not occur within the College's program or activity; or
  - c. Did not occur against a person in the United States.

If dismissal is required, the College must promptly send written notice of the dismissal and the reasons for the dismissal simultaneously to the parties. Dismissal of a Formal Complaint does not preclude action under the College's code of conduct.

2. **Permissive** Dismissal. The College **may** dismiss a Formal Complaint if, at any time during the investigation, any of the following occurs:
  - a. The Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint;
  - b. The Respondent is no longer enrolled in or employed by the College; or

- c. Specific circumstances prevent the College from gathering evidence sufficient to reach a determination as to the Formal Complaint.

If such dismissal occurs, the College must promptly send written notice of the dismissal and the reasons for the dismissal simultaneously to the parties. If dismissed, the College will review whether the complaint should be investigated under other applicable policies or codes of conduct.

#### **Consolidation of Formal Complaints**

The College may consolidate Formal Complaints as to allegations of sexual harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against another party, where the allegations of sexual harassment arise out of the same facts or circumstances.

#### **Informal Resolution**

Following the filing of a Formal Complaint, and at any time prior to reaching a determination regarding responsibility, the College may facilitate an informal resolution process, including mediation, which does not involve a full investigation and adjudication. The facilitator of an informal resolution process may not be the same individual as the Title IX Coordinator or Deputy Coordinator, investigators, decision-maker or appeal decision-maker. The informal resolution process shall adhere to the following:

1. An informal resolution process is not available to resolve allegations that an employee sexually harassed a student.
2. The College shall not require, as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of Formal Complaints of sexual harassment under Title IX.
3. Before conducting any informal resolution process, the College will provide to the parties a written notice disclosing:
  - a. the allegations;
  - b. the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a Formal Complaint arising from the same allegations, if any;
  - c. that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the Formal Complaint process; and,
  - d. any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared and whether the facilitator of the informal resolution process may be a witness in any subsequent Formal Complaint process.
4. The College will obtain the parties' voluntary written consent to the informal resolution process.

5. An informal resolution process shall be resolved within thirty (30) days of the written notice described in this paragraph, unless additional time is needed as determined by the College.

### **BASIC REQUIREMENTS OF THE GRIEVANCE PROCESS**

The College's grievance process shall include all the basic requirements under Title IX and all Title IX Coordinators, Deputy Coordinators, investigators, decision-maker, appeal decision-maker, and facilitators of informal resolution, and any other College employees engaged in the grievance process shall adhere to the following:

1. Engage in an objective evaluation of all relevant evidence – including both inculpatory and exculpatory evidence.
2. Refrain from making credibility determinations based on a person's status as a Complainant, Respondent, or witness.
3. Be free from a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent, and disclose facts which are relevant to this issue prior to serving in a designated role in the grievance process.
4. Apply a presumption that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process. Provide supportive measures to both Complainant and Respondent.
5. Adhere to the time frames herein for conclusion of the grievance process.
6. Apply the Preponderance of the Evidence Standard for Formal Complaints against students, employees, and all other individuals.
7. Not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

### **GRIEVANCE PROCESS**

#### **Notice of a Formal Complaint**

Normally within ten (10) days of receiving a Formal Complaint, the Title IX Coordinator or Deputy Coordinator shall provide a written notice to the parties who are known. The written notice shall include:

1. Notice of the College's grievance process, including any informal resolution process;
2. Notice of the allegations potentially constituting sexual harassment, including sufficient details known at the time of the notice (identities of the parties involved in the incident, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident);

3. A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process;
4. A statement that the parties may request to inspect and review evidence that is directly related to the allegations raised in the Formal Complaint;
5. Notice that each party has the opportunity to be accompanied to any related meeting or proceeding by an advisor of their choice, who may be, but is not required to be, an attorney, and that if a party does not have an advisor at the hearing, the College will assign an advisor at no cost to conduct cross examination at the hearing; and
7. Notice to the parties of any provision in the College's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

If, during an investigation, the College decides to investigate allegations about the Complainant or Respondent that are not included in the notice, the College shall provide notice of the additional allegations to the parties whose identities are known.

#### **Designated Roles in the Grievance Process**

During the grievance process, the College will designate individuals to serve as advisors, if necessary, investigators, decision-maker, appeal decision-maker, and facilitator of an informal resolution. No individual shall serve in more than one role in any individual grievance process.

The Complainant and Respondent will be notified in writing of the individuals assigned to the process. The Complainant or Respondent may request the removal of an individual on the grounds of personal bias or other conflict of interest by submitting a written statement to the Title IX Coordinator or Deputy Coordinator setting forth the basis for the request no later than two (2) business days after receiving the notice of the identity of the individual assigned. The Title IX Coordinator or Deputy Coordinator will determine whether to accept or deny the request. If the request is accepted, a replacement will be appointed and notice will be provided to the Complainant and Respondent. The decision of the Title IX Coordinator or Deputy Coordinator with regard to the request is final and is not appealable.

#### **Investigation of the Formal Complaint**

The College shall designate one or two investigators to investigate the allegations in a Formal Complaint and ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the College and not on the parties. The investigator(s) shall not restrict the ability of either party to gather and present relevant evidence, or to discuss the allegations under investigation.

During the investigation, the investigator(s) shall:

1. Provide to the party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of

investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.

2. Provide equal opportunity for the parties to present witnesses and other inculpatory and exculpatory evidence.
3. Provide the parties with the same opportunities to have others present during any complaint proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney. The College may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties.
4. Prior to completion of the investigative report, send to each party and the party's advisor, if any, the evidence obtained as part of the investigation that is directly related to the allegations raised in a Formal Complaint so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. The evidence shall be provided in an electronic format or a hard copy and shall include a) evidence upon which the College does not intend to rely in reaching a determination regarding responsibility, and b) inculpatory and exculpatory evidence, whether obtained from a party or other source. The parties shall have at least ten (10) days to submit a written response, which the investigators will consider prior to completion of the investigative report.
5. Create an investigative report that fairly summarizes relevant evidence and, at least ten (10) days prior to the time of determination regarding responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or hard copy, for their review and written response.
6. Not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

#### **Determinations of Responsibility**

The College shall designate a decision-maker to review the evidence and make a determination of responsibility based upon the Preponderance of the Evidence Standard.

Prior to a hearing (below), the decision-maker will review the investigation report, file, and if applicable, the Complainant's and Respondent's written response to the investigation report. The decision-maker will make all such evidence subject to the parties' inspection and review available at the hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross examination.

#### **Hearing Procedures**

The decision-maker will provide for a live hearing for any Formal Complaint.

1. Location and Accommodations

	<ul style="list-style-type: none"><li>a. Live hearings may be conducted with all parties physically present in the same geographic location, or at the decision-maker's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.</li><li>b. At the request of either party, the decision-maker must provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker and parties to simultaneously see and hear the party or the witness answering questions.</li><li>c. Parties who have visual, hearing, or speech disabilities will be provided accommodations necessary to effectively participate in the hearing. Parties must submit a request for accommodations to the Title IX Coordinator at least twenty-four (24) hours prior to the hearing.</li></ul> <p>2. Advisor</p> <ul style="list-style-type: none"><li>a. Parties will have the same opportunity to have an advisor present during the live hearing.</li><li>b. The decision-maker will not limit the choice or presence of an advisor, but the decision-maker may establish restrictions regarding the extent to which the advisor may participate in the hearing, as long as the restrictions apply equally to both parties.</li><li>c. Advisors may not unreasonably delay the grievance process in any manner including interrupting witnesses or answering questions on behalf of witnesses.</li></ul> <p>3. Hearing Procedures</p> <ul style="list-style-type: none"><li>a. The decision-maker will conduct the hearing in a professional and orderly manner, including establishing reasonable time restrictions that will be apply equally to all parties.</li><li>b. The decision-maker will allow each party to present witnesses to provide testimony related to the allegations within the Formal Complaint.</li><li>c. The decision-maker will administer an oath for each witness before the witness is permitted to answer questions. During any witness testimony, relevant evidence may also be submitted.</li><li>d. The decision-maker may also ask witnesses to provide testimony related to the allegations within the Formal Complaint.</li><li>e. Each party's advisor(s) will be permitted to ask any witnesses (including the other party) all relevant questions and follow-up questions, including questions challenging credibility of the witness. The decision-maker may limit questioning that the decision-maker determine is cumulative.</li><li>f. Questions, including cross examination questions, must be conducted directly, orally, and in real time by the party's advisor and never by a party personally.</li><li>g. Each party's advisor will only be permitted to ask cross examination questions and other questions that are relevant to the allegations.</li></ul>
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- 1) Before a witness (including the Complainant and the Respondent) answers a cross-examination or other question, the decision-maker must first determine whether the question is relevant.
  - 2) If a question is not relevant, the decision-maker(s) will not allow the question and must explain any decision to exclude a question as not relevant.
- h. Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove:
- 1) That someone other than the Respondent committed the conduct alleged by the Complainant, or
  - 2) If the questions and evidence concerns specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.
  - 3) If a party or witness does not submit to cross-examination at the live hearing, the decision-maker cannot draw any inference about a determination regarding responsibility based solely on the party's or witness's absence from the live hearing or refusal to answer cross examination or other questions.
- i. After both parties have had an equal opportunity to ask relevant questions of witnesses, the decision-maker may determine that the opportunity to present witnesses has ended. The decision-maker may then close the hearing.
4. Transcript  
The decision-maker must create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review.

#### **Written Determination**

The decision-maker must conduct an objective evaluation of all relevant evidence (including both inculpatory and exculpatory evidence) and must make credibility determinations that are not based on the person's status as Complainant, Respondent, or witness.

The decision-maker will render a decision based upon the investigation report, file, response submitted by the Complainant and/or Respondent, evidence at the hearing, and any other information the decision-maker may deem appropriate (and allowable under Title IX) and which is made available to both the Complainant and Respondent. While the Title IX Coordinator and Deputy Coordinator are available for consultation, the Title IX Coordinator and Deputy Coordinator will not participate in making a decision.

The decision-maker will use a Preponderance of the Evidence Standard in making a determination whether a violation of this policy has occurred.

The written determination must include:

- a. Identification of the allegations potentially constituting 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 the application of the College's code of conduct to the facts;
- e. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the College imposes on the Respondent, and whether remedies designed to restore or preserve equal access to the College's education program or activity will be provided by the College to the Complainant; and
- f. The College's procedures and permissible bases for the Complainant and Respondent to appeal.

If the decision is made that there is not sufficient basis to believe that it is more likely than not that the Respondent violated this policy, the Complainant and Respondent will be notified of that determination and informed of other resources that may be available.

If the decision is made that it is more likely than not that the Respondent violated this policy, the decision-maker or the decision-maker's designee shall determine appropriate sanction(s), except as provided below with respect to employees. The determination will include steps to take to prevent recurrence of any such violations, and as appropriate, remedies for the Complainant.

#### **Sanctions for Student Respondents**

Sanctions imposed upon students who are determined to have violated this policy may include a variety of institutional responses or requirements, including, but not limited to, the following: written reprimand, corrective action, no contact directive, mandatory housing reassignment, probation, housing probation, loss of privileges/access, restitution, disciplinary suspension, housing suspension, expulsion, housing expulsion, academic removal, and any other sanctions listed in the Code of Student Conduct or deemed appropriate under the circumstances.

#### **Sanctions for Employee Respondents**

Appropriate sanctions for SWTC faculty, staff, or administrators deemed to have violated this policy include, but are not limited to a disciplinary warning, unpaid suspensions, and/or termination of employment, or any other available sanctions as specified by the SWTC Employee Handbook.

If the decision-maker determines that it is more likely than not that a SWTC employee has violated this Policy and that dismissal may be an appropriate sanction, the matter will be referred to the Chief Human Resource Officer,

for appropriate process and decision, which shall be determined and administered in a manner consistent with the SWTC Employee Handbook.

In such cases, dismissal for cause may only be effectuated in accordance with SWTC Employee Handbook, including use of the preponderance of the evidence standard. The decision-maker or the decision-maker' designee may impose appropriate sanctions short of dismissal, in a manner consistent with the SWTC Employee Handbook.

### **Remedies to Benefit Complainants**

If a determination was made that the Respondent was responsible for Title IX sexual harassment, the College may provide the Complainant with remedies designed to restore or preserve equal access to the College's education program or activity, including providing a safe educational or working environment. Such remedies may include the continuation or addition of "supportive measures." Remedies need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent.

### **APPEAL PROCEDURES**

The determination of the decision-maker may be appealed as provided below. In the event that no appeal is filed within the time periods prescribed below, the decision will be final.

1. Following the communication of the decision by the decision-maker, the Complainant or Respondent may request an appeal of the decision.
2. The request for an appeal must be submitted in writing to the Title IX Coordinator within five (5) business days of receiving the written determination. If an appeal is filed, the determination regarding responsibility becomes final on the date that the College provides the parties with the written determination of the result of the appeal. Failure to file a timely appeal constitutes a waiver of any right to an appeal. If an appeal is not filed, the determination regarding responsibility becomes final on the sixth business day after receiving the written determination. If both parties voluntarily agree to waive their appeal rights, the determination regarding responsibility becomes final on the day both waivers of appeal are received by the College in writing.
3. The basis for an appeal will be limited to the following:
  - a. Procedural irregularity that affected the outcome of the matter;
  - b. 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; and
  - c. The Title IX Coordinator, investigators, or decision-maker have a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.
4. The appeal decision-maker must:
  - a. Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;

- b. Give both parties five (5) business days (which may be extended for good cause) to submit a written statement in support of, or challenging, the outcome;
  - c. Issue a written decision describing the result of the appeal and the rationale for the result; and
  - d. Provide the written decision simultaneously to both parties.
5. If the appeal decision-maker determines one of the above basis for an appeal is satisfied, the matter may be returned for further review of the investigation report by new decision-maker. If the basis for appeal relate to the investigation, or warrant additional investigation, the new decision-maker may refer the matter for further investigation before proceeding. The new decision-maker shall utilize the same process as required for all Formal Complaints under this Policy.
  6. If there is not adequate reason to believe that one or more grounds for appeal has been satisfied, the appeal decision-maker may dismiss the appeal. This decision is final and is not appealable.
  7. The appeal decision-maker will provide a written determination to the parties within ten (10) business days of the filing of the appeal.

#### **TIMEFRAME FOR DETERMINATION**

The conclusion of the grievance process, including any appeal, shall be done in a reasonably prompt timeframe, but no more than ninety (90) days from the date the Formal Complaint is received. The parties may agree to an extension of the 90-day timeframe to complete the grievance process or extend this timeline for good cause, as permissible by law.

#### **RETALIATION PROHIBITED**

Neither the College nor any person may intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this Policy, or 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 Policy.

Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or Formal Complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or this part, constitutes retaliation.

Complaints alleging retaliation may be filed according to the grievance procedures for sex discrimination adopted by the College under the [Nondiscrimination Policy and Grievance Procedures](#).

The College will take appropriate action, up to and including termination for employees, or dismissal for students, against any individual who retaliates against another person in violation of this Policy.

#### **RECORDKEEPING**

The College shall maintain for a period of seven years, records of:

1. Each sexual harassment investigation, including any determination regarding responsibility, any audio or audiovisual recording or transcript, any disciplinary sanctions imposed on the Respondent, and any remedies provided to the Complainant designed to restore or preserve access to the College's education program or activity;
2. Any appeal and the result therefrom;
3. Informal resolution and the result therefrom; and
4. All materials used to train Title IX Coordinators, Deputy Coordinators, investigators, decision-maker, and any person who facilitates an informal resolution process with regard to sexual harassment.

The College shall create and maintain for a period of seven years, records of any actions, including any supportive measures, taken in response to a report or Formal Complaint of sexual harassment.

With respect to each response, the College shall document the basis for its conclusion that its response was not deliberately indifferent, and document that it took measures designed to restore or preserve access to the College's educational program or activity. The documentation of certain bases or measures does not limit the College in the future from providing additional explanations or detailing additional measures taken.

#### **TRAINING**

The College shall ensure that the following training is provided:

1. Title IX Coordinators, Deputy Coordinators, investigators, decision-maker, appeal decision-maker, and any person who facilitates an informal resolution process shall receive training on the definition of sexual harassment under Title IX, the scope of the College's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.
2. The College shall ensure investigators receive training on how to create an investigative report that fairly summarizes relevant evidence.
3. The College shall ensure decision-maker receive training on issues of relevance of questions and evidence, including questions and evidence about a Complainant's prior sexual behavior. Decision-makers shall also receive training on any technology to be used at a live hearing.

Any materials used to train Title IX Coordinators, Deputy Coordinators, investigators, decision-maker, appeal decision-maker, and facilitators of informal resolutions may not rely on sex stereotypes and must promote impartial investigations and adjudications of Formal Complaints of sexual harassment.

All materials used for mandatory training will be posted on the College's website.

**ADDITIONAL INFORMATION**

**The Clery Act**

The Clery Act requires that SWTC compile statistics of crimes that occur on/near campus; requires that all Campus Security Authorities (CSA) promptly report crimes to Campus Safety.

A CSA is defined as any member of Campus Safety, any individual specifically identified by the school as an individual to which students and employees should report criminal offenses; and an official of the institution who has significant responsibility for student and campus activities including, but not limited to, student housing, student discipline, and student campus judicial proceedings. Other examples include faculty or staff advisor of student organizations, resident assistants, coaches, etc. An employee may be a CSA if a student reasonably believes the employee has authority or responsibility to act (even if the employee does not). This means that any employee could be considered a CSA.

**Identifying an individual as a CSA for purposes of the Clery Act does not establish the individual as “an official with authority to issue corrective measures” under Title IX. Accordingly, notice to a CSA of sexual harassment may not constitute actual notice under Title IX.**