

MINUTES-SPECIAL JOINT MEETING
of the BOR Human Resources and Administration Committee
AND the Academic and Student Affairs Committee
10:30 am, Friday, May 22, 2020
Meeting Conducted Via Remote Participation

HR/ ADMIN. COMMITTEE MEMBERS	PARTICIPATING
Naomi Cohen, Chair	Yes
Eleese Wright	Yes
David Jimenez	Yes
Richard J. Balducci	Yes
ASA COMMITTEE MEMBERS	
Merle Harris, Chair	Yes
Aviva D. Budd	Yes
<i>Naomi K. Cohen</i>	<i>Yes</i>
Holly Howery	Yes
Colena Sesanker	Yes

CSCU STAFF PRESENT:

Andrew Kripp, Vice President, Human Resources
Ernestine Weaver, Counsel
Jane Gates, Provost & Senior VP Academic & Student Affairs
Chris Henderson, Labor Relations Associate
Erin A Fitzgerald, Director of Board Affairs
Cheryl Connor, Admin. Assistant, Board Affairs

CALL TO ORDER

With a quorum present, Chair Cohen called the meeting to order at 10:33 am.

DISCUSSION ITEM

a. Title IX Update

Ernestine Weaver reported on the recently published Federal final regulation on Sexual Misconduct that takes effect August 14th. The new regulations will require the Board to adopt a new policy on sexual misconduct and to have in place reporting, support services and investigation protocols for both the accuser and the accused person. Training on the new regulations will be developed. Given that many faculty are off contract in the summer, some training will need to be provided when they return for the fall semester. In addition to training opportunities, the system will need to modify its faculty, employee and student handbooks and codes of conduct and disseminate this information. **Attorney Weaver** discussed the Board's Sexual Misconduct Reporting, Support Services and Processes Policy and summarized major changes to the Federal Department of Education final Title IX regulation. Those documents are attached.

Staff continue to review the final Title IX rule. The Board will need to modify its current policy in compliance with the regulation.

b. ADA in a COVID workplace update

Andy Kripp, VP of Human Resources, gave an update regarding anticipated expanded eligibility of individuals who, prior to COVID19, did not require accommodations. He noted that in the COVID environment, more individuals may seek accommodations based on their health conditions and public health professionals' guidance.

ACTION ITEM

Chair Cohen explained that the HR Committee needs to vote on the delegation of authority for awarding emeritus status to administrative faculty. Chris Henderson, Labor Relations Associate, provided a summary of the proposed resolution. See attached Staff Report.

Upon conclusion of Chris' summary, Chair Cohen requested a motion to adopt the subject resolution. **On a motion by Eliese Wright, seconded by David Jimenez, the resolution below was unanimously adopted.**

CONNECTICUT BOARD OF REGENTS FOR HIGHER EDUCATION

RESOLUTION

concerning

DELEGATION OF AUTHORITY FOR AWARDED EMERITUS STATUS TO ADMINISTRATIVE FACULTY

June 18, 2020

WHEREAS, The Agreement between the Connecticut State University Organization of Administrative Faculty and the Board of Regents of Higher Education ("SUOAF Agreement") Article 15, specifically section 15.9, provides for emeritus status to be awarded to administrative faculty members holding continuing appointment at the University recommending the title who have retired in accordance with the provisions of the State Statutes; and

WHEREAS, The provision further states that emeritus status is awarded by the Board of Regents upon the recommendation by the University President; and

WHEREAS, The Board of Regents delegates this authority and authorizes the University President to award emeritus status in satisfaction of SUOAF Agreement section 15.9; now therefore, be it

RESOLVED, The University President is authorized to award emeritus status to administrative faculty members.

ADJOURNMENT

On a motion by Eliese Wright, seconded by David Jimenez, the meeting adjourned at 11:17 am.

ITEM

Delegation of Authority for Awarding Emeritus Status to Administrative Faculty

BACKGROUND

Section 15.9 of the State University Organization of Administrative Faculty collective bargaining agreement states that emeritus status is award by the Board of Regents upon recommendation by the University President. Upon approval of the emeritus designation, a SUOAF affiliated employee is entitled to the following privileges:

- Desk space, if available;
- Full use of the library;
- Catalog listing;
- A printed certificate;
- Professional use of the title;
- Invitations to University Functions;
- Course Privileges for themselves, their spouses, and their unmarried children under 25 on a space available basis; and
- Inclusion on mailing list for university publication

Although all other collective bargaining units and management confidential personnel policies authorize the president to grant emeritus status, the State University Organization of Administrative Faculty does not provide that authorization. Instead, the Board of Regents is charged with awarding emeritus status to administrative faculty. In order to expedite the process and align the process with the other units, the Board would have to delegate the authority to award emeritus status to the University Presidents.

The attached resolution is designed to give the University Presidents the authority to grant this status without Board approval. Since Emeritus status envisages service to the University community, the final decision should rest with the University President

RECOMMENDATION

That the Board of Regents for Higher Education adopts the proposed resolution delegating the authority for awarding emeritus status to administrative faculty to the presidents of the Connecticut State Universities.

**Board of Regents for Higher Education
Connecticut State Colleges and Universities**

**Policy Regarding
Sexual Misconduct Reporting, Support Services and Processes Policy**

Statement of Policy

The Board of Regents for Higher Education (BOR) in conjunction with the Connecticut State Colleges and Universities (CSCU) is committed to insuring that each member of every BOR governed college and university community has the opportunity to participate fully in the process of education and development. The BOR and CSCU strive to maintain a safe and welcoming environment free from acts of sexual misconduct, including sexual harassment, sexual assault, intimate partner violence and stalking. It is the intent of the BOR and each of its colleges or universities to provide safety, privacy and support to victims of sexual misconduct and intimate partner violence.

The BOR strongly encourages students, parents, bystanders and employees to report any instance of sexual misconduct, including sexual harassment, sexual assault, sexual exploitation, stalking and intimate partner violence. All reports will be addressed promptly and all parties will be treated equitably. Each and every BOR governed college and university shall provide complainants and respondents of sexual misconduct reports with many supportive options, including referral to agencies that provide medical attention, counseling, legal services, advocacy, referrals and general information regarding sexual misconduct. Each and every BOR governed college and university will preserve the confidentiality of those who report sexual misconduct to the fullest extent possible and allowed by law. All BOR and CSCU employees, victim support persons and community victim advocates being consulted will make any limits of confidentiality clear before any disclosure of facts takes place. Other than confidential resources as defined above, in addition to employees who qualify as Campus Security Authorities under the Jeanne Clery Act, all BOR and CSCU employees are required to immediately communicate to the institution's designated recipient any disclosure or report of sexual misconduct received from a student as well as communicate any disclosure or report of sexual misconduct the employee received from another employee when misconduct is related to the business of the institution.

Affirmative consent must be given by all parties before engaging in sexual activity. Affirmative consent means an active, clear and voluntary agreement by a person to engage in sexual activity with another person. Sexual misconduct, as defined herein, is a violation of BOR policies and, in addition, may subject an accused student or employee to criminal penalties. The BOR and each of its governed colleges and universities are committed to providing an environment free of personal offenses. Sexual relationships of any kind between staff/faculty and students are discouraged pursuant to BOR policy.

The Board of Regents for Higher Education hereby directs the Connecticut State Colleges and Universities to implement the Policy stated above pursuant to the following provisions:

Commented [WEY1]: Title IX requires that anyone must be able to report

Commented [WEY2]: Statement to address "deliberate indifference" and equal access requirements of Title IX

Commented [WEY3]: Title IX requires the use of "complainant" and "respondent" terminology and equal support, services and access to respondents as well as complainants.

Commented [WEY4]: This is required by CGS 10a-55m (b)(1) and Title IX does not preclude the use of this.

Terms, Usage and Standards

Complainant means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

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Consent must be affirmed and given freely, willingly, and knowingly of each participant to desired sexual involvement. Consent is a mutually affirmative, conscious decision – indicated clearly by words or actions – to engage in mutually accepted sexual contact. Consent may be revoked at any time during the sexual activity by any person engaged in the activity.

Affirmative consent may never be assumed because there is no physical resistance or other negative response. A person who initially consents to sexual activity shall be deemed not to have affirmatively consented to any such activity which occurs after that consent is withdrawn. It is the responsibility of each person to assure that he or she has the affirmative consent of all persons engaged in the sexual activity to engage in the sexual activity and that affirmative consent is sustained throughout the sexual activity. It shall not be a valid excuse to an alleged lack of affirmative consent that the student or employee responding to the alleged violation believed that the student reporting or disclosing the alleged violation consented to the activity (i) because the responding student or employee was intoxicated or reckless or failed to take reasonable steps to ascertain whether the student or employee reporting or disclosing the alleged violation affirmatively consented, or (ii) if the responding student or employee knew or should have known that the student or employee reporting or disclosing the alleged violation was unable to consent because the student or employee was unconscious, asleep, unable to communicate due to a mental or physical condition, or incapacitated due to the influence of drugs, alcohol or medication. The existence of a past or current dating or sexual relationship between the persons involved in the alleged violation shall not be determinative of a finding of affirmative consent.

Commented [WEY6]: Required pursuant to CGS 10a-55m(b) and (h)

Report of sexual misconduct is the receipt of a communication of an incident of sexual misconduct accompanied by a request for an investigation or adjudication by the institution.

Disclosure is the receipt of any communication of an incident of sexual misconduct that is not accompanied by a request for an investigation or adjudication by the institution.

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

Commented [WEY7]: Title IX definition

Sexual misconduct includes engaging in any of the following behaviors:

Commented [WEY8]: Statutorily, sexual misconduct supportive services and processes refer only to sexual assault, stalking and intimate partner violence. It was a policy decision to include sexual harassment under 10a-55c. Does the Board wish to continue this?

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- (a) **Sexual harassment**, which can include any unwelcome sexual advance or request for sexual favors, or any conduct of a sexual nature when submission to such conduct is made either explicitly or implicitly a term or condition of an individual's education or employment; submission to or rejection of such conduct by an individual is used as a basis for academic or employment decisions affecting the individual; or such conduct has the purpose or effect of substantially interfering with an individual's academic or work performance or creating an

Sexual Misconduct Reporting
Support Services and Processes Policy

intimidating, hostile or offensive educational or employment environment. Examples of conduct which may constitute sexual harassment include but are not limited to:

- sexual flirtation, touching, advances or propositions
- verbal abuse of a sexual nature
- pressure to engage in sexual activity
- graphic or suggestive comments about an individual's dress or appearance
- use of sexually degrading words to describe an individual
- display of sexually suggestive objects, pictures or photographs
- sexual jokes
- stereotypic comments based upon gender
- threats, demands or suggestions that retention of one's educational status is contingent upon toleration of or acquiescence in sexual advances.

Commented [WEY9]: This is a paraphrase of CGS 10a-55(c). Note that CGS 10a-55(a) requires all institutions of higher education to have a statement of policy regarding sexual harassment and defines the term in sub(c)

Retaliation is prohibited and occurs when a person is subjected to an adverse employment or educational action because he or she made a complaint under this policy or assisted or participated in any manner in an investigation. No institution or 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 because the individual has made a report of complaint, testified, assisted or participated or refused to participate in any manner in an investigation, proceeding or hearing related to a report or complaint related to sex discrimination.

Commented [WEY10]: New title IX 34 CFR 106.71(a) and 34 CFR 668.46(m) VAWA

- (b) Sexual assault shall include but is not limited to a sexual act directed against another person without the consent (as defined herein) of the other person or when that person is not capable of giving such consent-

Commented [WEY11]: Required by CGS 10a-55m(a)(7)

Sexual assault is further defined in sections 53a-70, 53a-70a, 53a-70b, 53a-71, 53a-72a, 53a-72b and 53a-73a of the Connecticut General Statutes.

- (c) Sexual exploitation occurs when a person takes non-consensual or abusive sexual advantage of another for anyone's advantage or benefit other than the person being exploited, and that behavior does not otherwise constitute one of the preceding sexual misconduct offenses. Examples of behavior that could rise to the level of sexual exploitation include:

- Prostituting another person;
- Non-consensual visual (e.g., video, photograph) or audio-recording of sexual activity;
- Non-consensual distribution of photos, other images, or information of an individual's sexual activity, intimate body parts, or nakedness, with the intent to or having the effect of embarrassing an individual who is the subject of such images or information;
- Going beyond the bounds of consent (for example, an individual who allows friends to hide in the closet to watch him or her having consensual sex);
- Engaging in non-consensual voyeurism;
- Knowingly transmitting an STI, such as HIV to another without disclosing your STI status;

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- Exposing one's genitals in non-consensual circumstances, or inducing another to expose his or her genitals; or
- Possessing, distributing, viewing or forcing others to view illegal pornography.

Sexual exploitation is further defined as a crime in Connecticut State Law.

- (d) **Intimate partner, domestic and/or dating violence means** any physical or sexual harm against an individual by a current or former spouse of or person in a dating or cohabitating relationship with such individual that results from any action by such spouse or such person that may be classified as a sexual assault under section 53a-70, 53a-70a, 53a-70b, 53a-71, 53a-72a, 53a-72b or 53a-73a of the general statutes, stalking under section 53a-181c, 53a-181d or 53a-181e of the general statutes, or domestic or family violence as designated under section 46b-38h of the general statutes. This includes any physical or sexual harm against an individual by a current or former spouse or by a partner in a dating relationship that results from (1) sexual assault (2) sexual assault in a spousal or cohabiting relationship; (3) domestic violence; (4) sexual harassment (5) sexual exploitation, as such terms are defined in this policy.

Commented [WEY12]: Required by 10a-55m(a)(5)

Offenses that are designated as “domestic violence” are against family or household members or persons in dating or cohabitating relationships and include assaults, sexual assaults, stalking, and violations of protective or restraining orders issued by a Court. Intimate partner violence may also include physical abuse, threat of abuse, and emotional abuse.

- Physical abuse includes, but is not limited to, slapping, pulling hair or punching.
- Threat of abuse includes but is not limited to, threatening to hit, harm or use a weapon on another (whether victim or acquaintance, friend or family member of the victim) or other forms of verbal threat.
- Emotional abuse includes but is not limited to, damage to one's property, driving recklessly to scare someone, name calling, threatening to hurt one's family members or pets and humiliating another person.
- Cohabitation occurs when two individuals dwell together in the same place as if married.
- The determination of whether a “dating relationship” existed is to be based upon the following factors: the reporting victim's statement as to whether such a relationship existed, the length of the relationship, the type of the relationship and the frequency of the interaction between the persons reported to be involved in the relationship.

- (e) **Stalking**, which is defined as repeatedly contacting another person when contacting person knows or should know that the contact is unwanted by the other person; and the contact causes the other person reasonable apprehension of imminent physical harm or the contacting person knows or should know that the contact causes substantial impairment of the other person's ability to perform the activities of daily life.

Commented [WEY13]: Required by CGS 10a-55m(a)(8)

As used in this definition, the term “contacting” includes, but is not limited to, communicating with (including internet communication via e-mail, instant message, on-line community or any other internet communication) or remaining in the physical presence of the other person.

Sexual Misconduct Reporting
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Confidentiality

When a BOR governed college or university receives a report of sexual misconduct all reasonable steps will be taken by the appropriate CSCU officials to preserve the privacy of the ~~reported victim~~complainant and respondent while promptly investigating and responding to the report. While the institution will strive to maintain the confidentiality of personally identifiable student information reported, which information is subject to privacy requirements of the Family Education Rights Privacy Act (FERPA), the institution also must fulfill its duty to protect the campus community.

Confidential resources are defined as follows: For the Universities, entities with statutory privilege, which include campus based counseling center, health center and pastoral counseling staff members whose official responsibilities include providing mental health counseling to members of the University community as well as off campus counseling and psychological services, health services providers, member(s) of the clergy, and the local Sexual Assault Crisis Center and Domestic Violence Center. For the Colleges, confidential resources are limited to entities with statutory privilege, such as off campus counseling and psychological services, health services providers, member(s) of the clergy, and the local Sexual Assault Crisis Center and Domestic Violence Center. The personnel of these centers and agencies are bound by state statutes and professional ethics from disclosing information about reports without written releases.

Information provided to a confidential resource by a victim of a sexual misconduct or the person reported to have been the victim of sexual misconduct cannot be disclosed legally to any other person without consent, except under very limited circumstances, such as an imminent threat of danger to self or others or if the reported victim is a minor. Therefore, for those who wish to obtain the fullest legal protections and disclose in full confidentiality, she/he must speak with a confidential resource. Each BOR governed college and university will provide a list of such confidential resources in the College or University's geographic region to victims of sexual misconduct as well as publish these resources on-line and in various publications.

Where it is deemed necessary for the institution to take steps to protect the safety of ~~the reported victim and/or other~~ members of the campus community, the institution will seek to act in a manner so as not to compromise the privacy or confidentiality of the ~~reported victim of sexual misconduct~~either the complainant or respondent to the extent reasonably possible.

Mandated Reporting by College and University Employees

Other than confidential resources as defined above, in addition to employees who qualify as Campus Security Authorities under the Jeanne Clery Act, all employees are required to immediately communicate to the institution's designated recipient (e.g., Title IX Coordinator) any disclosure or report of sexual misconduct received from a student regardless of the age of the reported victim. All employees are also required to communicate to the institution's designated recipient (e.g., Title IX Coordinator) any disclosure or report of sexual misconduct received from an employee that impacts employment with the institution or is otherwise related to the business of the institution.

Upon receiving a disclosure or a report of sexual misconduct, employees are expected to supportively, compassionately and professionally offer academic and other accommodations and to provide a referral for support and other services.

Commented [WEY14]: This was initially drafted to address vicarious liability and constructive knowledge. 34 CFR 106.30 defines "actual knowledge" as notice of sexual harassment or allegations of sexual harassment to a recipient's Title IX Coordinator or any official of the recipient who has authority to institute corrective measures.

Commented [WEY15]: This is policy

Sexual Misconduct Reporting
Support Services and Processes Policy

Further, in accordance with Connecticut State law, with the exception of student employees, any paid administrator, faculty, staff, athletic director, athletic coach or athletic trainer who, in the ordinary course of their employment, has a reasonable cause to suspect or believe that a person under the age of 18 years has been abused or neglected, has been placed in imminent harm or has had a non-accidental injury is required by law and Board policy to report the incident within twelve hours to their immediate supervisor and to the Department of Children and Families.

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Rights of Parties

~~Those who report~~ Complainants and respondents ~~any type of sexual misconduct to any BOR governed college or university employee~~ will be informed in a timely manner of all their rights and options, including the necessary steps and potential outcomes of each option. Complainants and respondents shall be offered non-disciplinary, non-punitive individualized served as appropriate and available that are designed to restore or preserve equal access to the institution's education program or activity without unreasonably burdening the other party, which may include measures designed to protect the safety of all parties or the institution's educational environment or deter sexual harassment.

Commented [WEY17]: 10a-55m(c)

Commented [WEY18]: Title IX supportive measures requirement

When choosing a reporting resource the following information should be considered:

- All reports of sexual misconduct will be treated seriously and with dignity by the institution.
- Referrals to off-campus counseling and medical services that are available immediately and confidential, whether or not those who report feel ready to make any decisions about reporting to police, a college or university employee or the campus's Title IX Coordinator.
- ~~Those who have been the victim of sexual misconduct have the~~ Information regarding the right to take both criminal and civil legal action against the individual allegedly responsible.
- Those who seek confidentiality may contact a clergy member(s), a University counseling center psychologist, a University health center care provider, the Sexual Assault Crisis Center of Connecticut and/or the Connecticut Coalition Against Domestic Violence – all of whom are bound by state statutes and professional ethics to maintain confidentiality without written releases.

Right to Notify Law Enforcement & Seek Protective and Other Orders

~~Those who report being subjected to sexual misconduct~~ Complainants and respondents shall be provided written information about her/his right to:

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- (1) notify law enforcement and receive assistance from campus authorities in making the notification; and,
- (2) obtain a protective order, apply for a temporary restraining order or seek enforcement of an existing order. Such orders include:
 - standing criminal protective orders;
 - protective orders issued in cases of stalking, harassment, sexual assault, or risk of injury to or impairing the morals of a child;

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- temporary restraining orders or protective orders prohibiting the harassment of a witness;
- family violence protective orders.

The institution will also honor lawful protective or temporary restraining orders.

Each and every BOR governed college and university shall create and provide information specific to its campus detailing the procedures to follow after the commission of such violence, including people or agencies to contact for reporting purposes or to request assistance, and information on the importance of preserving physical evidence.

Options for Changing Academic, Housing, Transportation and Working Arrangements

The colleges and universities will provide assistance, through their Title IX Coordinator, to those involved in a report of sexual misconduct complainants and respondents, including but not limited to, reasonably available options for changing academic situation, including but not limited to extensions of deadlines or other course related adjustments, modifications of work or class schedules, campus transportation and escort services, mutual restrictions on contact between parties, leaves of absence, increased security and monitoring and housing or working situations. as well as honoring lawful protective or temporary restraining orders.

Each and every BOR governed college and university shall create and provide information specific to its campus detailing the procedures to follow after the commission of such violence, including people or agencies to contact for reporting purposes or to request assistance, and information on the importance of preserving physical evidence.

Support Services Contact Information

It is BOR policy that whenever a college or university Title IX Coordinator or other employee receives a report that a student, faculty or staff member has been subjected to of sexual misconduct, the Title IX Coordinator or other employee shall immediately provide the student, faculty or staff member, all parties with contact information for and, if requested, professional assistance in accessing and using any appropriate campus resources, or local advocacy, counseling, health, and mental health services, without fee. All CSU campuses shall develop and distribute contact information for this purpose as well as provide such information on-line.

Sexual Misconduct Investigation and Procedures

Reported victims of sexual misconduct Complainants shall have the opportunity to request that an investigation or disciplinary proceedings begin promptly; that such disciplinary proceedings shall be conducted by an official trained annually in issues relating to sexual misconduct and shall use the

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Sexual Misconduct Reporting
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preponderance of the evidence (more likely than not) standard in making a determination concerning the alleged sexual misconduct.

Both the ~~reported victim of sexual misconduct and the accused student~~ Complainant and Respondent are entitled to be accompanied to any meeting or proceeding relating to the allegation of sexual misconduct by an advisor or support person of their choice, provided the involvement of such advisor or support person does not result in the postponement or delay of such meeting as scheduled and provided such an advisor or support person may not directly address the Hearing Body, question witnesses or otherwise actively participate in the hearing process or other meeting pertaining to a report of sexual misconduct and each ~~student party~~ shall have the opportunity to present evidence and witnesses on her/his behalf during any disciplinary proceeding.

Both the ~~reported victim and accused student~~ Complainant and Respondent are entitled to be provided at the same time written notice of the results of any disciplinary proceeding, normally within one (1) business day after the conclusion of such proceeding, which notice shall include the following: the name of the ~~accused student~~ Respondent the violation committed, if any, and any sanction imposed upon the ~~accused student~~ respondent. Sanctions may range from a warning to expulsion, depending upon the behavior and its severity of the violation(s). The ~~reported victim~~ Complainant shall have the same right to request a review of the decision of any disciplinary proceeding in the same manner and on the same basis as shall the ~~accused student~~ Respondent; however, in such cases, if a review by any ~~reported victim~~ Complainant is granted, among the other actions that may be taken, the sanction of the disciplinary proceeding may also be increased. ~~The reported victim and the accused student~~ Both the Complainant and Respondent are entitled to be simultaneously provided written notice of any change in the results of any disciplinary proceeding prior to the time when the results become final as well as to be notified when such results become final.

~~In accordance with the Family Educational Rights and Privacy Act (FERPA), the accused student and the reported victim have the right to keep their identities confidential.~~

Employee Specific Procedures

Employees who are reported to have engaged in sexual misconduct are subject to discipline in accordance with the procedures applicable to the employee's classification of employment.

Student Specific Procedures

The Student Code of Conduct provides the procedures for the investigation, definitions of terms, and resolution of complaints regarding student conduct, including those involving sexual misconduct, as defined herein.

The Title IX Coordinator can assist in explaining the student conduct process. The Student Code of Conduct provides an equal, fair, and timely process (informal administrative resolution or a formal adjudication) for reported victims and accused students.

Dissemination of this Policy

Commented [WEY23]: Old Title IX requirement now in conflict with new title IX requirements. So this should be removed.

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Commented [WEY26]: According to OCR possible to have two sets of procedures one to address Title IX and the other to address conduct procedures 10a-55m(6), (7), (8)

Commented [WEY27]: Conflicts with confidentiality above,

Commented [WEY28]: Violence Against Women Act and 10a-55m(6), (7), (8)

Sexual Misconduct Reporting
Support Services and Processes Policy

Upon adoption by the Board all CSCU institutions shall, upon receipt, immediately post and maintain this policy at all times in an easily accessible manner on each institution's website, handbook and catalogue. This policy shall thereafter be annually provided to all Title IX Coordinators, campus law enforcement officers and security personnel, and other campus personnel. Further, this policy shall be presented at student orientation and at student awareness and prevention trainings, and made broadly available at each campus. The policy shall be expanded upon by each institution to provide resources and contact information specific to their institution and geographic area as set forth above. This includes but is not limited to the name, office address, email address and telephone number of the Title IX Coordinators.

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Summary of Major Provisions of the Department of Education's Title IX Final Rule

Issue	The Title IX Final Rule: Addressing Sexual Harassment in Schools
<p>1. Notice to the School, College, University ("Schools"): Actual Knowledge</p>	<p>The Final Rule requires a K-12 school to respond whenever <i>any</i> employee has notice of sexual harassment, including allegations of sexual harassment. Many State laws also require all K-12 employees to be mandatory reporters of child abuse. For postsecondary institutions, the Final Rule allows the institution to choose whether to have mandatory reporting for all employees, or to designate some employees to be confidential resources for college students to discuss sexual harassment without automatically triggering a report to the Title IX office.</p> <p>For all schools, notice to a Title IX Coordinator, or to an official with authority to institute corrective measures on the recipient's behalf, charges a school with actual knowledge and triggers the school's response obligations.</p>
<p>2. Definition of Sexual Harassment for Title IX Purposes</p>	<p>The Final Rule defines sexual harassment broadly to include any of three types of misconduct on the basis of sex, all of which jeopardize the equal access to education that Title IX is designed to protect: Any instance of <i>quid pro quo</i> harassment by a school's employee; any unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it denies a person equal educational access; any instance of sexual assault (as defined in the Clery Act), dating violence, domestic violence, or stalking as defined in the Violence Against Women Act (VAWA).</p> <ul style="list-style-type: none"> - The Final Rule prohibits sex-based misconduct in a manner consistent with the First Amendment. <i>Quid pro quo</i> harassment and Clery Act/VAWA offenses are <u>not</u> evaluated for severity, pervasiveness, offensiveness, or denial of equal educational access, because such misconduct is sufficiently serious to deprive a person of equal access. - The Final Rule uses the Supreme Court's <i>Davis</i> definition (severe <i>and</i> pervasive <i>and</i> objectively offensive conduct, effectively denying a person equal educational access) as one of the three categories of sexual harassment, so that where unwelcome sex-based conduct consists of speech or expressive conduct, schools balance Title IX enforcement with respect for free speech and academic freedom. - The Final Rule uses the Supreme Court's Title IX-specific definition rather than the Supreme Court's Title VII workplace standard (severe <i>or</i> pervasive conduct creating a hostile work environment). First Amendment concerns differ in educational environments and workplace environments, and the Title IX definition provides First Amendment protections appropriate for educational institutions where students are learning, and employees are teaching. Students, teachers, faculty, and others should enjoy free speech and academic freedom protections, even when speech or expression is offensive.

Summary of Major Provisions of the Department of Education's Title IX Final Rule

<p>3. Sexual Harassment Occurring in a School's "Education Program or Activity" and "in the United States"</p>	<p>The Title IX statute applies to persons in the United States with respect to education programs or activities that receive Federal financial assistance. Under the Final Rule, schools must respond when sexual harassment occurs in the school's education program or activity, against a person in the United States.</p> <ul style="list-style-type: none"> - The Title IX statute and existing regulations contain broad definitions of a school's "program or activity" and the Department will continue to look to these definitions for the scope of a school's education program or activity. Education program or activity includes locations, events, or circumstances over which the school exercised substantial control over both the respondent and the context in which the sexual harassment occurred, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution (such as a fraternity or sorority house). - Title IX applies to all of a school's education programs or activities, whether such programs or activities occur on-campus or off-campus. A school may address sexual harassment affecting its students or employees that falls outside Title IX's jurisdiction in any manner the school chooses, including providing supportive measures or pursuing discipline.
<p>4. Accessible Reporting to Title IX Coordinator</p>	<p>The Final Rule expands a school's obligations to ensure its educational community knows how to report to the Title IX Coordinator.</p> <ul style="list-style-type: none"> - The employee designated by a recipient to coordinate its efforts to comply with Title IX responsibilities must be referred to as the "Title IX Coordinator." - Instead of notifying only students and employees of the Title IX Coordinator's contact information, the school must also notify applicants for admission and employment, parents or legal guardians of elementary and secondary school students, and all unions, of the name or title, office address, e-mail address, and telephone number of the Title IX Coordinator. - Schools must prominently display on their websites the required contact information for the Title IX Coordinator. - Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by e-mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. - Such a report may be made at any time, including during non-business hours, by using the telephone number or e-mail address, or by mail to the office address, listed for the Title IX Coordinator.
<p>5. School's Mandatory Response Obligations: The Deliberate Indifference Standard</p>	<p>Schools must respond promptly to Title IX sexual harassment in a manner that is not deliberately indifferent, which means a response that is not clearly unreasonable in light of the known circumstances. Schools have the following mandatory response obligations:</p> <ul style="list-style-type: none"> - Schools must offer supportive measures to the person alleged to be the victim (referred to as the "complainant").

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	<ul style="list-style-type: none"> - The Title IX Coordinator must promptly contact the complainant confidentially to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint. - Schools must follow a grievance process that complies with the Final Rule before the imposition of any disciplinary sanctions or other actions that are not supportive measures, against a respondent. - Schools must not restrict rights protected under the U.S. Constitution, including the First Amendment, Fifth Amendment, and Fourteenth Amendment, when complying with Title IX. - The Final Rule requires a school to investigate sexual harassment allegations in any formal complaint, which can be filed by a complainant, or signed by a Title IX Coordinator. - The Final Rule affirms that a complainant's wishes with respect to whether the school investigates should be respected unless the Title IX Coordinator determines that signing a formal complaint to initiate an investigation over the wishes of the complainant is not clearly unreasonable in light of the known circumstances. - If the allegations in a formal complaint do not meet the definition of sexual harassment in the Final Rule, or did not occur in the school's education program or activity against a person in the United States, the Final Rule clarifies that the school must dismiss such allegations <i>for purposes of Title IX</i> but may still address the allegations in any manner the school deems appropriate under the school's own code of conduct.
<p>6. School's Mandatory Response Obligations:</p> <p>Defining "Complainant," "Respondent," "Formal Complaint," "Supportive Measures"</p>	<p>When responding to sexual harassment (e.g., by offering supportive measures to a complainant and refraining from disciplining a respondent without following a Title IX grievance process, which includes investigating formal complaints of sexual harassment), the Final Rule provides clear definitions of complainant, respondent, formal complaint, and supportive measures so that recipients, students, and employees clearly understand how a school must respond to sexual harassment incidents in a way that supports the alleged victim and treats both parties fairly.</p> <p>The Final Rule defines "complainant" as an individual <i>who is alleged to be the victim</i> of conduct that could constitute sexual harassment.</p> <ul style="list-style-type: none"> - This clarifies that any third party as well as the complainant may report sexual harassment. - While parents and guardians do not become complainants (or respondents), the Final Rule expressly recognizes the legal rights of parents and guardians to act on behalf of parties (including by filing formal complaints) in Title IX matters. <p>The Final Rule defines "respondent" as an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.</p>

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	<p>The Final Rule defines "formal complaint" as a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the school investigate the allegation of sexual harassment and states:</p> <ul style="list-style-type: none"> - At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the school with which the formal complaint is filed. - A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information required to be listed for the Title IX Coordinator under the Final Rule, and by any additional method designated by the school. - The phrase "document filed by a complainant" means a document or electronic submission (such as by e-mail or through an online portal provided for this purpose by the school) that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint. - Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or a party during a grievance process, and must comply with requirements for Title IX personnel to be free from conflicts and bias. <p>The Final Rule defines "supportive measures" as individualized services reasonably available that are non-punitive, non-disciplinary, and not unreasonably burdensome to the other party while designed to ensure equal educational access, protect safety, or deter sexual harassment.</p> <ul style="list-style-type: none"> - The Final Rule evaluates a school's selection of supportive measures and remedies based on what is not clearly unreasonable in light of the known circumstances, and does not second guess a school's disciplinary decisions, but requires the school to offer supportive measures, and provide remedies to a complainant whenever a respondent is found responsible.
7. <i>Grievance Process, General Requirements</i>	<p>The Final Rule prescribes a consistent, transparent grievance process for resolving formal complaints of sexual harassment. Aside from hearings (see Issue #9 below), the grievance process prescribed by the Final Rule applies to all schools equally including K-12 schools and postsecondary institutions. The Final Rule states that a school's grievance process must:</p> <ul style="list-style-type: none"> - Treat complainants equitably by providing remedies any time a respondent is found responsible, and treat respondents equitably by not imposing disciplinary sanctions without following the grievance process prescribed in the Final Rule. - Remedies, which are required to be provided to a complainant when a respondent is found responsible, must be designed to maintain the complainant's equal access to education and may include the same individualized services described in the Final Rule as supportive measures; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent. - Require objective evaluation of all relevant evidence, inculpatory and exculpatory, and avoid credibility determinations based on a person's status as a complainant, respondent, or witness.

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- Require Title IX personnel (Title IX Coordinators, investigators, decision-makers, people who facilitate any informal resolution process) to be free from conflicts of interest or bias for or against complainants or respondents.
- Training of Title IX personnel must include training on the definition of sexual harassment in the Final Rule, the scope of the school'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.
- A school must ensure that decision-makers receive training on any technology to be used at a live hearing.
- A school's decision-makers and investigators must receive training on issues of relevance, including how to apply the rape shield protections provided only for complainants.
- Include 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.
- Recipients must post materials used to train Title IX personnel on their websites, if any, or make materials available for members of the public to inspect.
- Include reasonably prompt time frames for conclusion of the grievance process, including appeals and informal resolutions, with allowance for short-term, good cause delays or extensions of the time frames.
- Describe the range, or list, the possible remedies a school may provide a complainant and disciplinary sanctions a school might impose on a respondent, following determinations of responsibility.
- State whether the school has chosen to use the preponderance of the evidence standard, or the clear and convincing evidence standard, for all formal complaints of sexual harassment (including where employees and faculty are respondents).
- Describe the school's appeal procedures, and the range of supportive measures available to complainants and respondents.
- A school's grievance process must not use, rely on, or seek disclosure of information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.
- Any provisions, rules, or practices other than those required by the Final Rule that a school adopts as part of its grievance process for handling formal complaints of sexual harassment, must apply equally to both parties.

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<p><i>8. Investigations</i></p>	<p>The Final Rule states that the school must investigate the allegations in any formal complaint and send written notice to both parties (complainants and respondents) of the allegations upon receipt of a formal complaint. During the grievance process and when investigating:</p> <ul style="list-style-type: none"> - The burden of gathering evidence and burden of proof must remain on schools, not on the parties. - Schools must provide equal opportunity for the parties to present fact and expert witnesses and other inculpatory and exculpatory evidence. - Schools must not restrict the ability of the parties to discuss the allegations or gather evidence (e.g., no “gag orders”). - Parties must have the same opportunity to select an advisor of the party’s choice who may be, but need not be, an attorney. - Schools must send written notice of any investigative interviews, meetings, or hearings. - Schools must send the parties, and their advisors, evidence directly related to the allegations, in electronic format or hard copy, with at least 10 days for the parties to inspect, review, and respond to the evidence. - Schools must send the parties, and their advisors, an investigative report that fairly summarizes relevant evidence, in electronic format or hard copy, with at least 10 days for the parties to respond. - Schools must dismiss allegations of conduct that do not meet the Final Rule’s definition of sexual harassment or did not occur in a school’s education program or activity against a person in the U.S. Such dismissal is only for Title IX purposes and does not preclude the school from addressing the conduct in any manner the school deems appropriate. - Schools may, in their discretion, dismiss a formal complaint or allegations therein if the complainant informs the Title IX Coordinator in writing that the complainant desires to withdraw the formal complaint or allegations therein, if the respondent is no longer enrolled or employed by the school, or if specific circumstances prevent the school from gathering sufficient evidence to reach a determination. - Schools must give the parties written notice of a dismissal (mandatory or discretionary) and the reasons for the dismissal. - Schools may, in their discretion, consolidate formal complaints where the allegations arise out of the same facts. - The Final Rule protects the privacy of a party’s medical, psychological, and similar treatment records by stating that schools cannot access or use such records unless the school obtains the party’s voluntary, written consent to do so.
<p><i>9. Hearings:</i></p>	<p>The Final Rule adds provisions to the “live hearing with cross-examination” requirement for postsecondary institutions and clarifies that hearings are optional for K-12 schools (and any other recipient that is not a postsecondary institution).</p>

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(a) <i>Live Hearings & Cross-Examination (for Postsecondary Institutions)</i>	<p>(a) For postsecondary institutions, the school's grievance process must provide for a live hearing:</p> <ul style="list-style-type: none"> - At the live hearing, the decision-maker(s) must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. - Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally. - At the request of either party, the recipient must provide for the entire live hearing (including cross-examination) to occur with the parties located in separate rooms with technology enabling the parties to see and hear each other. - Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker must first determine whether the question is relevant and explain to the party's advisor asking cross-examination questions any decision to exclude a question as not relevant. - If a party does not have an advisor present at the live hearing, the school must provide, without fee or charge to that party, an advisor of the school's choice who may be, but is not required to be, an attorney to conduct cross-examination on behalf of that party. - If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions. - Live hearings may be conducted with all parties physically present in the same geographic location or, at the school's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually. - Schools must create an audio or audiovisual recording, or transcript, of any live hearing.
(b) <i>Hearings are Optional, Written Questions Required (for K-12 Schools)</i>	<p>(b) For recipients that are K-12 schools, and other recipients that are not postsecondary institutions, the recipient's grievance process may, <i>but need not</i>, provide for a hearing:</p> <ul style="list-style-type: none"> - With or without a hearing, after the school has sent the investigative report to the parties and before reaching a determination regarding responsibility, the decision-maker(s) must afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party.
(c) <i>Rape Shield Protections for Complainants</i>	<p>(c) The Final Rule provides rape shield protections for complainants (as to all recipients whether postsecondary institutions, K-12 schools, or others), deeming irrelevant questions and evidence about a complainant's prior sexual behavior unless offered to prove that someone other than the respondent committed the alleged misconduct or offered to prove consent.</p>

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<p><i>10. Standard of Evidence & Written Determination</i></p>	<p>The Final Rule requires the school's grievance process to state whether the standard of evidence to determine responsibility is the preponderance of the evidence standard or the clear and convincing evidence standard. The Final Rule makes each school's grievance process consistent by requiring each school to apply the same standard of evidence for all formal complaints of sexual harassment whether the respondent is a student or an employee (including faculty member).</p> <ul style="list-style-type: none"> - The decision-maker (who cannot be the same person as the Title IX Coordinator or the investigator) must issue a written determination regarding responsibility with findings of fact, conclusions about whether the alleged conduct occurred, rationale for the result as to each allegation, any disciplinary sanctions imposed on the respondent, and whether remedies will be provided to the complainant. - The written determination must be sent simultaneously to the parties along with information about how to file an appeal.
<p><i>11. Appeals</i></p>	<p>The Final Rule states that a school must offer both parties an appeal from a determination regarding responsibility, and from a school's dismissal of a formal complaint or any allegations therein, on the following bases: procedural irregularity that affected the outcome of the matter, newly discovered evidence that could affect the outcome of the matter, and/or Title IX personnel had a conflict of interest or bias, that affected the outcome of the matter.</p> <ul style="list-style-type: none"> - A school may offer an appeal equally to both parties on additional bases.
<p><i>12. Informal Resolution</i></p>	<p>The Final Rule allows a school, in its discretion, to choose to offer and facilitate informal resolution options, such as mediation or restorative justice, so long as both parties give voluntary, informed, written consent to attempt informal resolution. Any person who facilitates an informal resolution must be well trained. The Final Rule adds:</p> <ul style="list-style-type: none"> - A school may 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 a formal investigation and adjudication of formal complaints of sexual harassment. Similarly, a school may not require the parties to participate in an informal resolution process and may not offer an informal resolution process unless a formal complaint is filed. - At any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint. - Schools must not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

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<i>13. Retaliation Prohibited</i>	<p>The Final Rule expressly prohibits retaliation.</p> <ul style="list-style-type: none">- Charging an individual with code of conduct violations that do not involve sexual harassment, but arise out of the same facts or circumstances as a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX constitutes retaliation.- The school must keep confidential the identity of complainants, respondents, and witnesses, except as may be permitted by FERPA, as required by law, or as necessary to carry out a Title IX proceeding.- Complaints alleging retaliation may be filed according to a school's prompt and equitable grievance procedures.- The exercise of rights protected under the First Amendment does not constitute retaliation.- Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a Title IX grievance proceeding does not constitute retaliation; however, a determination regarding responsibility, alone, is not sufficient to conclude that any party made a bad faith materially false statement.
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