



Procedure 123-01 Title IX Sexual Harassment

Sponsor: Student Affairs

Purpose

Coconino Community College (CCC) is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities, that are free from sexual harassment, discrimination on the basis of sex, and retaliation.

Definitions

Actual Knowledge means that an employee, student, or third-party informs the Title IX Coordinator or other Official with Authority of the alleged occurrence of alleged harassing, discriminatory, and/or retaliatory conduct. Actual knowledge compels Coconino Community College (CCC) to initiate action.

Advisor means a person chosen by a party or appointed by the institution to accompany the party to meetings related to the resolution process, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if a hearing is held. This individual may be a CCC employee, a member of the community, or attorney (hired and paid for by a party).

Clery Act is a consumer protection law that aims to provide transparency around campus crime policy and statistics.

Complainant means an individual who is alleged to be the victim of conduct that could constitute sexual harassment or retaliation for engaging in a protected activity.

Confidential Resource means an employee who is not a Mandatory Reporter or an Official with Authority (irrespective of Clery Act Campus Security Authority status). At CCC, there are no confidential resources; all employees are mandatory reporters.

Day(s) means a business day when CCC is in normal operation.

Education Program or Activity means locations, events, or circumstances where CCC exercises substantial control over both the Respondent and the context in which the sexual harassment or discrimination occurs and also includes any building owned or controlled by a student organization that is officially recognized by CCC.

Final Determination of Responsibility means a conclusion by preponderance of the evidence that the alleged conduct occurred, or did not occur, and whether it did, or did not, violate policy and procedure.

Formal Complaint means a document filed with the Title IX Coordinator and signed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment or retaliation for engaging in a protected activity against a Respondent and requesting that CCC investigate the allegation.

Formal Grievance Process means a method of formal resolution designated by CCC to address conduct that falls within the policies included below, and which complies with the requirements of 34 CFR Part 106.45.

Grievance Process Pool means any investigators, appeal officers, hearing administrators, and Advisors who may perform any or all of these roles (though not at the same time or with respect to the same case).

Hearing Decision-maker means a person who has decision-making and sanctioning authority within CCC's Formal Title IX Grievance process.

Incapacitation Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the "who, what, when, where, why, or how" of their sexual interaction).

Investigator means the person or persons charged by CCC with gathering facts about an alleged violation of this policy and procedure, assessing relevance and credibility, synthesizing the evidence, and compiling this information into an investigation report and file of directly related evidence.

Mandatory Reporter means an employee of CCC who is obligated by policy and procedure to share knowledge, notice, and/or reports of harassment, discrimination, and/or retaliation with the Title IX Coordinator. Mandatory reporters do not convey actual knowledge to CCC. Mandatory Reporter under this policy and procedure does not diminish the requirement under Arizona state law to report alleged or suspected child abuse, elder abuse, and/or abuse of individuals with disabilities to appropriate officials, though these responsibilities may overlap with those who have mandatory reporter responsibility in this policy and procedure.

Official with Authority (OWA) means an employee of CCC explicitly vested with the responsibility to implement corrective measures for harassment and/or retaliation on behalf of CCC. Notice to an OWA of an allegation of sexual harassment as defined in this policy and procedure conveys actual knowledge to CCC and triggers a responsibility to act.

Parties include the Complainant(s) and Respondent(s), collectively.

Promptness means the time period in which allegations are acted upon once CCC has received notice or a formal complaint. Typically, complaints can take 60-90 business days to resolve. There are always exceptions and extenuating circumstances that can cause a resolution to take longer, but CCC will avoid all undue delays within its control.

Remedies means post-finding actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to CCC's educational program.

Resolution means the result of an informal or formal grievance process.

Respondent means an individual who has been reported to be the perpetrator of conduct that could constitute harassment or discrimination based on a protected class or retaliation for engaging in a protected activity. When the Respondent is a member of the CCC community, a grievance process may

be available regardless of the status of the Complainant, who may or may not be a member of the CCC community.

Sanction means a consequence imposed by CCC on a Respondent who is found to have violated this policy and procedure.

Sexual Harassment means the umbrella category including the offenses of sexual harassment, sexual assault, stalking, dating violence and domestic violence.

Student means any individual who is registered or enrolled for credit or non-credit bearing coursework, camps and other CCC-sponsored programs or activities, and who maintains an ongoing relationship with CCC, which means the student is on leave (medical, administrative, or other documented leave of absence) but is not registered or taking classes at the time of the complaint being filed.

Title IX Coordinator is at least one official designated by CCC to ensure compliance with Title IX and CCC's Title IX program. References to the Coordinator throughout this policy and procedure may also encompass a designee of the Coordinator for specific tasks.

Title IX Team refers to the Title IX Coordinator, any deputy coordinators, and any member(s) of the Grievance Process Pool.

Procedure

I. Title IX Coordinator

CCC has a designated Title IX Coordinator who oversees implementation of this policy and procedure. The Title IX Coordinator has the primary responsibility for coordinating CCC's efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remediate, and prevent discrimination, harassment, and retaliation prohibited under this policy and procedure.

The name and contact information of the CCC Title IX Coordinator can be found on the following page: <https://www.coconino.edu/title-ix>. It is the responsibility of the Title IX Coordinator to ensure this list is up-to-date with correct information. The Title IX Coordinator must act with independence and authority free from bias and conflicts of interest.

To raise any concern involving bias or conflict of interest by the CCC Title IX Coordinator, contact the Human Resources Office at CCC by emailing hr@coconino.edu. Concerns of bias or a potential conflict of interest by any other Title IX team member should be raised with the Title IX Coordinator.

Reports of misconduct or discrimination committed by the CCC Title IX Coordinator should be reported to the Human Resources Office. Reports of misconduct or discrimination committed by any other Title IX Team member should be reported to the Title IX Coordinator.

II. Officials with Authority and Mandatory Reporters

Officials with authority

CCC has determined that the following administrators are Officials with Authority to address and correct sexual harassment and/or retaliation. In addition to the Title IX team members listed in the definitions section, these Officials with Authority listed below may also accept notice or complaints on behalf of CCC. Knowledge on the part of an Official with Authority conveys actual knowledge to CCC.

1. CCC President
2. Assistant to the CCC President

3. Title IX Coordinator
4. Provost
5. Executive Vice President – Chief Financial Officer
6. Executive Director of Human Resources
7. Chief External Affairs Officer/Executive Director of the CCC Foundation
8. Executive Director of Extended Learning
9. College Deans/Associate Deans (at all levels)
10. CCC Campus Safety & Security Staff
11. Athletic Director
12. Directors/Program Managers (all departments)

Mandatory Reporters

All employees at CCC are mandatory reporters and are required to report actual or suspected discrimination or harassment to the Title IX Coordinator. A Complainant who expects formal action in response to their allegations, but does not wish to contact the Title IX Coordinator should report their allegations to any mandatory reporter who can connect them with resources to report crimes and/or policy and procedure violations. Mandatory reporters will, within twenty-four (24) hours, refer reports to the Title IX Coordinator (and/or police, if desired by the Complainant), who will take action. Mandatory reporters must promptly (within twenty-four (24) hours) share with the Title IX Coordinator all known details of a report made to them in the course of their employment. Knowledge to a mandatory reporter does not convey actual knowledge to the CCC.

Anonymous Notice to Mandated Reporters

A Complainant may request that the mandatory reporter provide notice to the Title IX Coordinator anonymously, without identification of the Complainant. A mandatory reporter cannot remain anonymous themselves. CCC will investigate matters in which anonymous notice has been given to the extent possible, both to assess the underlying allegation(s) and to determine if supportive measures or remedies can be provided. However, anonymous notice typically limits CCC's ability to investigate, respond, and provide remedies, depending on what information is shared. When a Complainant has made a request for anonymity, the Complainant's personally identifiable information may be withheld by a mandatory reporter, but all other details of the alleged incident(s) must be shared with the Title IX Coordinator. Supportive measures may be offered to the Complainant as the result of such disclosures without formal CCC action.

Failure of a mandatory reporter to report an incident of harassment or discrimination of which they become aware is a violation of CCC policy and procedure and the mandatory reporter may be subject to disciplinary action, up to and including termination, for failure to comply.

III. Confidential Resources and Federal Resources

A Complainant who wants to keep the details of an incident confidential may speak with non-employees, including:

- Licensed professional counselors and other medical providers
- Local rape crisis counselors
- Domestic violence resources
- Local or state assistance agencies
- Clergy/Chaplains
- Attorneys

The Chief College Security Officer at CCC will submit anonymous statistical information for Clery Act purposes unless it is believed it would be harmful to the complainant.

External Inquiries may also be made to:

Office for Civil Rights,
Denver Office
U.S. Department of Education
Cesar E. Chavez Memorial Building
1244 Speer Boulevard, Suite 310
Denver, CO 80204-3582
Telephone: (303) 844-5695
Facsimile: (303) 844-4303
Email: OCR.Denver@ed.gov

IV. Notice/Complaints of Discrimination, Harassment, and/or Retaliation

Notice or complaints of discrimination, harassment, and/or retaliation in violation of this policy and procedure may be made using any of the following options:

1. File a complaint with, or give verbal notice to, the Title IX Coordinator or an Official with Authority. Such a report may be made at any time (including during non-business hours) by using the telephone number or email address, or by mail to the office address, listed for the Title IX Coordinator or any other official listed. The Title IX Coordinator can be found on the following page: <https://www.coconino.edu/title-ix>. It is the responsibility of the Title IX Coordinator to ensure this list is up to date with correct information.
2. Report online, using the reporting form posted at <https://www.coconino.edu/title-ix>. Anonymous reports are accepted, but can give rise to a need to investigate. CCC tries to provide supportive measures to all Complainants, which is impossible with an anonymous report when the name of the Complainant is not shared in the report. Since anonymous reporting carries no obligation to initiate a formal response and since CCC respects a Complainant's requests to dismiss complaints, unless there is a compelling threat to health and/or safety, the matter will be dismissed.

A formal complaint is a document filed and signed by the Complainant or signed by the Title IX Coordinator alleging a policy and procedure or procedure violation by a Respondent and requesting that CCC investigate the allegation(s). A complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information in the section immediately above, or as described in this section. As used in this paragraph, the phrase "document filed by a Complainant" means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by CCC) that contains the Complainant's physical or digital signature, which can include the Complainant's name on the email, or otherwise indicates that the Complainant is the person filing the complaint.

The Title IX Coordinator will contact the Complainant regarding any notice that is submitted in a form that does not comply with these requirements to ensure that it is filed correctly.

There is no statute of limitations for filing a Title IX Complaint. The Title IX Coordinator works with the Complainant to ensure their wishes are considered with respect to the planned and implemented supportive measures.

V. Supportive Measures

CCC will offer and implement appropriate and reasonable supportive measures to the parties upon notice of alleged harassment, discrimination, and/or retaliation.

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the parties to restore or preserve access to CCC's education program or activity, including measures designed to protect the safety of all parties, CCC's educational environment, and/or deter sexual harassment, discrimination on the basis of sex, and/or retaliation. The Title IX Coordinator shall make supportive measures available to the parties upon receiving notice of allegations or a formal complaint.

CCC will maintain the privacy of the supportive measures, provided that maintaining privacy does not impair CCC's ability to provide the supportive measures. CCC will act to ensure as minimal an academic impact on the parties as possible. CCC will implement measures in a way that does not unreasonably burden the other party.

These actions may include, but are not limited to:

1. Referral to counseling, medical, and/or other healthcare services in the community
2. Referral to the Employee Assistance Program
3. Referral to community-based service providers
4. In-house visa and immigration assistance
5. Student financial aid counseling
6. Education to the community or community subgroup(s)
7. Altering work arrangements for employees or student-employees
8. Safety planning
9. Providing campus safety escorts
10. Implementing contact limitations (no contact orders) between the parties
11. Academic support, extensions of deadlines, or other course/program-related adjustments
12. Trespass orders, when applicable
13. Timely warnings under the Clery Act
14. Class schedule modifications, withdrawals, or leaves of absence
15. Increased security and monitoring of certain areas of the campus
16. Any other actions deemed appropriate by the Title IX Coordinator

Violations of no contact orders will be referred to appropriate student or employee conduct processes for enforcement and further discipline, as is necessary.

VI. Emergency Removal

CCC can act to remove a Respondent entirely or partially from its education program/activities or CCC employment on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal. This risk analysis is performed by the Title IX Coordinator in conjunction with the CCC CARE Team (also known as a Behavioral Intervention Team) using its standard objective violence risk assessment procedures.

The Title IX Coordinator has sole discretion under this policy and procedure to implement or stay an emergency removal and to determine the conditions and duration. Violation of an emergency removal under this policy and procedure will be grounds for discipline, which may include expulsion from CCC or termination from employment.

In all cases where an emergency removal is imposed:

1. The Respondent will be given written notice of the action. In the written notice will be the option to request to meet with the Title IX Coordinator as soon as reasonably possible, to show cause as to why the action/removal should not be implemented or should be modified. This meeting is not a hearing on the merits of the underlying Title IX allegations, but rather an administrative process intended to determine solely whether the emergency removal is appropriate.
2. The Respondent has three (3) days after the receipt of the emergency removal to request a Show Cause meeting with the Title IX Coordinator. If the Respondent does not make such a request within the three (3) day time period, objection to the emergency removal is deemed waived.
3. The Respondent may be accompanied by an Advisor of their choosing in the Show Cause administrative meeting with the Title IX Coordinator.
4. The Respondent will be given access to a written summary of the basis for the emergency removal prior to the meeting to allow for adequate preparation. Such summary will be included in the notification letter regarding the emergency removal.
5. The Title IX Coordinator will issue a Show Cause Meeting Determination letter to the Respondent within two (2) days of the meeting taking place.
6. There is no appeal process for emergency removal decisions.
7. A Complainant and their Advisor may be permitted to participate in this meeting, as it is equitable to do so.
8. CCC will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns.

For additional information regarding emergency removals, please see Emergency Removals.

VII. Privacy

Every effort is made by CCC to preserve the privacy of a report under this policy and procedure.

For additional information regarding privacy and confidentiality under this policy and procedure, please see Confidentiality and Privacy at <https://www.coconino.edu/title-ix>.

VIII. Jurisdiction

This policy and procedure apply to all CCC educational programs and activities, and to conduct that takes place on the campus or on property owned or controlled by CCC, at CCC-sponsored events, or in buildings owned or controlled by CCC's recognized student organizations. The Respondent must be a member of CCC's community in order for its policies to apply. Nevertheless, even when the Respondent is not a member of CCC's community, supportive measures, remedies, and resources may be accessible to the Complainant by contacting the Title IX Coordinator.

This policy and procedure apply to the effects of off-campus misconduct that effectively deprive someone of access to CCC's educational programs. CCC may also extend jurisdiction to off-campus and/or to online conduct when the Title IX Coordinator determines that the conduct affects a substantial CCC interest.

Regardless of where the conduct occurred, CCC will address notice/complaints to determine whether the conduct occurred in the context of its employment or educational program or activity and/or has continuing effects on campus or in an off-campus sponsored program or activity.

The Title IX Coordinator may be able to provide guidance for a student or employee Complainant who experiences sexual harassment/discrimination in an externship, study abroad program, or other environment external to the CCC under CCC's Student Conduct Code or employee conduct or nondiscrimination policies.

For additional information regarding CCC jurisdiction over Title IX matters, please see Jurisdiction.

IX. Time Limits on Reporting

There is no time limitation on providing notice/complaints to the Title IX Coordinator. However, if the Respondent is no longer subject to CCC's jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide remedies may be more limited or impossible.

Acting on notice/complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of policy and procedure) is at the discretion of the Title IX Coordinator (except in cases where mandatory dismissal is required), who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

CCC will apply the policy in place at the time of the alleged misconduct and the procedures in place at the time of the notice of alleged misconduct or complaint of sexual harassment.

X. Online Harassment and Misconduct

This policy and procedure are written and should be interpreted broadly to include online and cyber manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on CCC's education programs and activities or use CCC networks, technology, or equipment.

When harassing communications made on websites, social media, and other venues not controlled by CCC are reported to CCC pursuant to this policy and procedure, CCC will attempt to address and mitigate the effects of such communications. Any online postings or other electronic communication by students and employees, including cyber-bullying, cyber-stalking, cyber-harassment, etc., occurring completely outside of CCC's control (e.g., not on CCC networks, websites, or between CCC email accounts) will only be subject to this policy and procedure when such online conduct can be shown to cause a substantial in-program disruption to the student's pursuit of CCC's educational programs and/or activities.

Off-campus harassing speech by employees, whether online or in person, may be regulated by CCC only when such speech is made in an employee's official or work-related capacity, including where the speaker holds themselves out as employees of CCC. Otherwise, such communications are considered speech protected by the First Amendment. Supportive measures for Complainants will be provided, but protected speech will not be subjected to discipline.

XI. Title IX Sexual Harassment

CCC has adopted the following definition of Title IX Sexual Harassment in order to address the unique environment of an academic community, which consists not only of employer and employees, but of students as well.

Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.

Sexual Harassment, as an umbrella category, includes the offenses of sexual harassment/discrimination, sexual assault, domestic violence, dating violence, and stalking, and is defined as:

Conduct on the basis of sex that satisfies one or more of the following:

1. Quid Pro Quo:
 - a. an employee of CCC,
 - b. conditions the provision of an aid, benefit, or service of CCC,
 - c. on an individual's participation in unwelcome sexual conduct; and/or
2. Sexual Harassment:
 - a. unwelcome conduct,
 - b. determined by a reasonable person,
 - c. to be so severe, and
 - d. pervasive, and,
 - e. objectively offensive,
 - f. that it effectively denies a person equal access to CCC's education program or activity. Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances ("in the shoes of the Complainant"), including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.
3. Sexual assault, defined as:
 - a. Sex Offenses, Forcible:
 - i. Any sexual act directed against another person,
 - ii. without the consent of the Complainant,
 - iii. including instances in which the Complainant is incapable of giving consent.
 - b. Forcible Rape:
 - i. Penetration,
 - ii. no matter how slight,
 - iii. of the vagina or anus with any body part or object, or
 - iv. oral penetration by a sex organ of another person,
 - v. without the consent of the Complainant.
 - c. Forcible Sodomy:
 - i. Oral or anal sexual intercourse with another person,
 - ii. forcibly,
 - iii. and/or against that person's will (non-consensually), or
 - iv. not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age (under the age of 18) or because of temporary or permanent mental or physical incapacity.
 - d. Sexual Assault with an Object:
 - i. The use of an object or instrument to penetrate,
 - ii. however slightly,
 - iii. the genital or anal opening of the body of another person,
 - iv. forcibly,
 - v. and/or against that person's will (non-consensually),
 - vi. or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

- e. Forcible Fondling:
 - i. The touching of the private body parts of another person (buttocks, groin, breasts),
 - ii. for the purpose of sexual gratification,
 - iii. forcibly,
 - iv. and/or against that person's will (non-consensually),
 - v. or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
 - f. Sex Offenses, Non-forcible:
 - i. Incest:
 - a. Non-forcible sexual intercourse,
 - b. between persons who are related to each other,
 - c. within the degrees wherein marriage is prohibited by Arizona law.
 - ii. Statutory Rape:
 - a. Non-forcible sexual intercourse,
 - b. with a person who is under the Arizona statutory age of consent, which is the age of 18 years old.
4. Dating Violence, defined as:
- a. violence,
 - b. on the basis of sex,
 - c. committed by a person,
 - d. who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.
 - i. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition
 - ii. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
 - iii. Dating violence does not include acts covered under the definition of domestic violence.
5. Domestic Violence, defined as:
- a. violence,
 - b. on the basis of sex,
 - c. committed by a current or former spouse or intimate partner of the Complainant,
 - d. by a person with whom the Complainant shares a child in common, or
 - e. by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
 - f. by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of the state of Arizona or
 - g. by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of the state of Arizona.

To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

6. Stalking, defined as:

- a. engaging in a course of conduct,
- b. on the basis of sex,
- c. directed at a specific person, that
 - i. would cause a reasonable person to fear for the person's safety, or
 - ii. the safety of others; or
 - iii. suffer substantial emotional distress.

For the purposes of this definition—

- i. Course of conduct means two or more acts, including, but not limited to, acts in which the Respondent 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.
- ii. Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
- iii. Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

CCC reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any offense under this policy and procedure.

Force, Coercion, Consent, and Incapacitation

As used in the offenses above, the following definitions apply:

Force: Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent.

Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

Coercion: Coercion is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point may be coercive.

Consent is:

- knowing, and
- voluntary, and
- clear permission
- by word or action
- to engage in sexual activity.

Since individuals may experience the same interaction in different ways, it is the responsibility of each party to determine that the other has consented before engaging in the activity. No one under the age of consent in Arizona, specifically, 18 years old, can consent to sexual activity.

If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged.

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain *their* consent to being kissed back.

Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease within a reasonable time.

Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent.

Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on CCC to determine whether its policy and procedure has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

Incapacitation: Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why, or how” of their sexual interaction).

Incapacitation is determined through consideration of all relevant indicators of an individual’s state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.

A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. As stated above, a Respondent violates this policy and procedure if they engage in sexual activity with someone who is incapable of giving consent.

It is a defense to a sexual assault policy and procedure violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. “Should have known” is an objective, reasonable person standard which assumes that a reasonable person is both sober and exercising sound judgment.

This policy and procedure also cover a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs.

XII. Retaliation

Protected activity under this policy and procedure includes reporting an incident that may implicate this policy and procedure, participating in the grievance process, supporting a Complainant or Respondent, assisting in providing information relevant to an investigation, and/or acting in good faith to oppose conduct that constitutes a violation of this policy and procedure.

Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. CCC is prepared to take appropriate steps to protect individuals who fear that they may be subjected to retaliation.

It is prohibited for CCC or any member of CCC's community to take materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or policy and procedure, 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 and procedure.

Charges against an individual for Student Conduct Code 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 complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation.

The following do not constitute retaliation under this policy and procedure:

1. The exercise of rights protected under the First Amendment.
2. Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this policy and procedure. A determination regarding responsibility, alone, is not sufficient to conclude that any party has made a materially false statement in bad faith.

For additional information on prohibited retaliation, please see Retaliation at <https://www.coconino.edu/title-ix>.

XIII. When a Complainant Does Not Wish to Proceed

If a complainant does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal complaint to be pursued, they may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus and to comply with state or federal law.

The Title IX Coordinator has ultimate discretion over whether CCC proceeds when the complainant does not wish to do so. The Title IX Coordinator may sign a formal complaint to initiate a grievance process upon completion of an appropriate violence risk assessment. The Title IX Coordinator's decision to sign a formal complaint should be based on results of the violence risk assessment that show a compelling risk to health and/or safety that requires CCC to pursue formal action to protect the community.

When the Title IX Coordinator executes the written complaint, they do not become the Complainant. The Complainant is the individual who is alleged to be the victim of conduct that could constitute a violation of this policy and procedure. The Complainant (or their Advisor) may have as much or as little involvement in the process as they wish. The Complainant retains all rights of a Complainant under this Policy and procedure irrespective of their level of participation. Typically, when the Complainant chooses not to

participate, the Advisor may be appointed as proxy for the Complainant throughout the process, acting to ensure and protect the rights of the Complainant.

In cases in which the Complainant requests confidentiality/no formal action and the circumstances allow CCC to honor that request, CCC will offer supportive measures, and remedies to the Complainant and the community, but will not otherwise pursue formal action.

If the Complainant elects to take no action, they can change that decision if they decide to pursue a formal complaint at a later date. Upon making a formal complaint, a Complainant has the right, and can expect, to have allegations taken seriously by CCC, and to have the incidents investigated and properly resolved through these procedures.

XIV. Federal Timely Warning Obligations

Parties reporting sexual assault, domestic violence, dating violence, and/or stalking should be aware that under the Clery Act, CCC must issue timely warnings for incidents reported to them that pose a serious or continuing threat of bodily harm or danger to members of the campus community.

CCC will ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

XV. False Allegations and Evidence

Deliberately false and/or malicious accusations under this policy and procedure, as opposed to allegations which, even if erroneous, are made in good faith, are a serious offense and will be referred to either the Student Conduct Code or employee conduct policies for appropriate disciplinary action.

Additionally, witnesses and parties knowingly providing false evidence, tampering with or destroying evidence after being directed to preserve such evidence, or deliberately misleading an investigator or Hearing Decision-maker will be subject to discipline under the appropriate student or employee policy and procedure as well as under this policy and procedure for providing false testimony.

XVI. Amnesty for Complainants and Witnesses

The CCC community encourages the reporting of misconduct and crimes by Complainants and witnesses. Sometimes, Complainants or witnesses are hesitant to report to CCC officials or participate in grievance processes because they fear that they themselves may be in violation of certain policies, such as underage drinking or use of illicit drugs at the time of the incident. Respondents may hesitate to be forthcoming during the process for the same reasons.

It is in the best interests of the CCC community that Complainants choose to report misconduct to CCC officials, that witnesses come forward to share what they know, and that all parties be forthcoming during the process. To encourage reporting and participation in the process, CCC maintains a policy and procedure of offering parties and witnesses amnesty from minor policy and procedure violations, such as underage consumption of alcohol or the use of illicit drugs related to the incident being reported.

Amnesty does not apply to more serious allegations such as physical abuse of another or illicit drug distribution. A decision not to offer amnesty to a Respondent should not be based on sex nor gender, but should take into account the rationale for amnesty. The incentive to report serious misconduct is rarely applicable to Respondents with respect to a Complainant.

CCC maintains a policy and procedure of amnesty for students who offer help to others in need via bystander intervention. While policy and procedure violations cannot be overlooked, CCC may provide purely educational options with no official disciplinary finding, rather than punitive sanctions, to those who offer their assistance to others in need.

XVII. Federal Statistical Reporting Obligations

Certain campus officials – those deemed Campus Security Authorities – have a duty to report the following for federal statistical reporting purposes (Clery Act):

1. All “primary crimes,” which include homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson;
2. Hate crimes, which include any bias-motivated primary crime as well as any bias-motivated larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property;
3. VAWA based crimes, which include sexual assault, domestic violence, dating violence, and stalking (VAWA is the Violence Against Women Act, enacted in 1994 codified in part at 42 U.S.C. sections 13701 through 14040); and
4. Arrests and referrals for disciplinary action for weapons-related law violations, liquor-related law violations, and drug abuse-related law violations.

All personally identifiable information is kept private, but statistical information must be passed along to campus security regarding the type of incident and its general location (on or off-campus or in the surrounding area, but no addresses are given) for publication in the Annual Security Report and daily campus crime log.

Campus Security Authorities include: presidents, vice-presidents, student affairs/student conduct staff, campus law enforcement/public safety, local police, coaches, athletic directors, student activities staff, human resources staff, advisors to student organizations, and any other official with significant responsibility for student and campus activities.

XVIII. Alleged Violations of The Title IX Policy and Procedure

1. Overview

CCC will act on any formal or informal notice/complaint of violation of the Title IX Sexual Harassment policy and procedure (“the Policy and procedure”) that is received by the Title IX Coordinator or any other Official with Authority by applying these procedures.

The procedures below apply **only** to qualifying allegations of sexual harassment (including sexual assault, dating violence, domestic violence, and stalking, as defined in Section XIII) involving CCC students, staff, administrator, or faculty members.

2. Notice/Complaint

Upon receipt of a complaint or notice to the Title IX Coordinator of an alleged violation of this Policy and procedure, CCC will initiate a prompt initial assessment to determine the next steps. The Title IX Coordinator will initiate at least one of three responses:

- a. Offering supportive measures because the Complainant does not want to proceed formally;
- b. Offering supportive measures and initiating an informal resolution; or
- c. Offering supportive measures and initiating a Formal Grievance Process including an investigation and a hearing to determine whether or not the Policy and procedure has been violated.

3. Initial Assessment

Following receipt of notice or a complaint of an alleged violation of this Policy and procedure, the Title IX Coordinator (or designee) will engage in an initial assessment, which is typically one (1) to five (5) business days in duration.

For more information related to the Initial Assessment, please see The Investigative Process at <https://www.coconino.edu/title-ix>.

4. Emergency Removal

In the event an emergency removal is considered, the Title IX Coordinator will follow the procedures outlined in Section VIII of this policy and procedure.

5. Dismissal (Mandatory and Discretionary)

Mandatory Dismissal: The Title IX Coordinator must dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing, it is determined that:

- a. The conduct alleged in the formal complaint would not constitute sexual harassment as defined in the Policy and procedure hereinabove, even if proved; and/or
- b. The conduct did not occur in an educational program or activity controlled by CCC (including buildings or property controlled by recognized student organizations), and/or CCC does not have control of the Respondent; and/or
- c. The conduct did not occur against a person in the United States; and/or
- d. At the time of filing a formal complaint, a Complainant is not participating in or attempting to participate in the education program or activity of CCC.

Any conduct alleged in the formal complaint that is dismissed under the first (1st) provision above will be referred by the Title IX Coordinator to the Student Code of Conduct administrator (for student Respondents) or the college Human Resources administrator (for employee/third party Respondents). Referrals shall take place within three (3) days of the date of the Dismissal Letter being mailed to the parties.

Discretionary Dismissal: The Title IX Coordinator may choose to dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing:

- a. A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein. A Complainant who decides to withdraw a complaint may later request to reinstate it or refile it; or
- b. The Respondent is no longer enrolled in or employed by CCC; or
- c. Specific circumstances prevent CCC from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon any dismissal, CCC will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties.

Both mandatory and discretionary dismissal decisions are appealable by any party under the procedures for appeal below.

6. Counterclaims

CCC is obligated to ensure that the grievance process is not abused for retaliatory purposes. CCC permits the filing of counterclaims but uses an initial assessment, described above, to assess whether the allegations in the counterclaim are made in good faith. Counterclaims made with retaliatory intent will not be permitted and may constitute a violation of this policy and procedure.

Counterclaims determined to have been reported in good faith will be processed using the grievance procedures below. Investigation of such claims may take place after resolution of the underlying initial allegation, in which case a delay may occur.

Counterclaims may also be resolved through the same investigation as the underlying allegation, at the discretion of the Title IX Coordinator.

7. Right to an Advisor

The parties may each have an Advisor of their choice. The Advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the resolution process. The parties may choose Advisors from inside or outside of the CCC community. The Advisor may be present with the Complainant or Respondent for all of their meetings and interviews within the resolution process, if they so choose.

The parties may select whoever they wish to serve as their Advisor as long as the Advisor is eligible and available. "Available" means the party agrees to act as Advisor and has no conflict of interest in doing so. Also, the Advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.

Choosing an Advisor who is also a witness in the process creates potential for bias and conflict-of-interest. A party who chooses an Advisor who is also a witness can anticipate that issues of potential bias will be explored by the hearing Decision-maker.

If the parties choose an Advisor from the pool available from CCC, the Advisor will be trained by CCC and be familiar with CCC's resolution process. If the parties choose an Advisor from outside the pool of those identified by CCC, the Advisor may not have been trained by CCC and may not be familiar with CCC policies and procedures.

Parties also have the right to choose not to have an Advisor in the initial stages of the resolution process, prior to a hearing. If either party chooses not to have an Advisor present in the initial stages of the resolution process, this choice will be documented in the record of the case.

For more information regarding the training received by an Advisor, please see Advisors FAQ at <https://www.coconino.edu/title-ix>.

a. Advisors in Hearings/CCC-Appointed Advisor

Under U.S. Department of Education regulations applicable to Title IX, cross-examination is required during the hearing, but must be conducted by the parties' Advisors. The parties are not permitted to directly cross-examine each other or any witnesses. If a party does not have an Advisor for a hearing, CCC will appoint a trained Advisor for the limited purpose of conducting cross-examination.

A party may reject this appointment and choose their own Advisor, but they may not proceed with the hearing without an Advisor. If the party's Advisor will not conduct cross-examination, CCC will appoint an Advisor who will do so thoroughly, regardless of the participation or non-participation of the advised party in the hearing itself. Extensive questioning of the parties and witnesses may also be conducted by the Decision-maker during the hearing.

b. Pre-Interview Meetings

Advisors may request to meet with the administrative officials conducting interviews/meetings in advance of these interviews or meetings. In order for a pre-interview meeting to be held it must be requested by the Advisor. This pre-meeting allows Advisors to clarify and understand their role and CCC's policies and procedures. A pre-interview meeting is not mandatory.

c. Advisor Violations of CCC Policy and procedure

All Advisors are subject to the same CCC policies and procedures, whether they are attorneys or not. Advisors are expected to advise without disrupting proceedings. Advisors may not address CCC officials in a meeting or interview unless invited to do so (e.g., asking procedural questions). The Advisor may not speak on behalf of their advisee during any meeting or proceeding and may not speak on behalf of the advisee to the investigator(s) or other Decision-maker except during a hearing proceeding, during cross-examination.

The parties are expected to respond to questions on their own behalf throughout the investigation phase of the resolution process. Although the Advisor generally may not speak on behalf of their advisee, the Advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any resolution process meeting or interview. For longer or more involved discussions, the parties and their Advisors should ask for breaks to allow for private consultation.

Any Advisor who oversteps their role as defined by this policy and procedure will be warned only once. If an Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting will be ended, or other appropriate measures implemented. Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.

d. Sharing Information with the Advisor

Parties may share documentation and evidentiary information directly with their Advisor or other individuals if they wish. Doing so may help the parties participate more meaningfully in the resolution process.

CCC also provides a consent form (FERPA authorization to release) that authorizes CCC to share such information directly with a party's Advisor. The parties must either complete and submit this form to the Title IX Coordinator or provide similar documentation demonstrating consent to a release of information to the Advisor before CCC is able to share records with an Advisor.

CCC will not comply with any party's request that all communications be made through their attorney Advisor.

e. Privacy of Records Shared with Advisor

Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly

authorized by CCC. CCC may seek to restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by the CCC's privacy expectations.

f. Expectations of an Advisor

The CCC expects an Advisor to adjust their schedule to allow them to attend CCC meetings when planned. At the sole discretion of the Title IX Coordinator, scheduled meetings may be changed to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay. A Title IX Coordinator's decision as to whether to change meeting dates and times is final.

CCC may also make reasonable provisions to allow an Advisor who cannot attend in person to attend a meeting by telephone, video conferencing, or other similar technologies as may be convenient and available.

g. Expectations of the Parties with Respect to Advisors

A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. The parties are expected to inform the Investigator(s) of the identity of their Advisor at least two (2) business days before the date of their first meeting with Investigators (or as soon as possible if a more expeditious meeting is necessary or desired).

The parties are expected to provide timely notice to the Title IX Coordinator if they change Advisors at any time. It is assumed that if a party changes Advisors, consent to share information with the previous Advisor is terminated, and a release for the new Advisor must be secured. Parties are expected to inform the Title IX Coordinator of the identity of their hearing Advisor at least two (2) business days before the hearing.

8. Resolution Processes

Resolution proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings in accordance with CCC policy and procedure. While there is an expectation of privacy around what Investigators share with parties during interviews, the parties have discretion to share their own knowledge and evidence with others if they so choose. CCC encourages parties to discuss this topic with their Advisors before doing so.

a. Informal Resolution can include four different approaches:

- When the parties agree to resolve the matter through an alternative resolution mechanism, such as mediation;
- When the parties agree to resolve the matter by entering into an Informal Resolution Agreement;
- When the Respondent accepts responsibility for violating policy, and desires to accept a sanction and end the resolution process; or
- When the Title IX Coordinator can resolve the matter informally by providing supportive measures to remedy the situation.

To initiate Informal Resolution, a Complainant needs to submit a Formal Complaint, as defined above. A Respondent who wishes to initiate Informal Resolution should contact the Title IX Coordinator.

It is not necessary to pursue Informal Resolution first in order to pursue a Formal Grievance Process. Any party participating in Informal Resolution can stop the process at any time and

begin or resume the Formal Grievance Process.

Prior to implementing an Informal Resolution, CCC will provide the parties with written notice of the reported misconduct and any sanctions or measures that may result from participating in such a process, including information regarding any records relating to the matter that will be maintained or shared by CCC.

CCC will obtain voluntary, written confirmation that all parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the parties to participate in Informal Resolution.

9. Formal Grievance Process

The Formal Grievance Process relies on a pool of administrators (“the Pool”) to carry out the process. Members of the Pool are announced in an annual distribution of this policy and procedure to all students, parents/guardians of students, employees, prospective students, and prospective employees. They are also listed in the Annual Title IX Report published by the Title IX Office.

For more information regarding the Formal Grievance Pool—including selection, training, and responsibilities—please see Formal Grievance Pool <https://www.coconino.edu/title-ix>.

10. Formal Grievance Process: Notice of Investigation and Allegations

The Title IX Coordinator will provide written notice of allegations (the “NOA”) to the Respondent upon commencement of the Formal Grievance Process. This facilitates the Respondent’s ability to prepare for the interview and to identify and choose an Advisor to accompany them. The NOA is also copied to the Complainant, who is to be given advance notice of when the NOA will be delivered to the Respondent.

The NOA will include:

- A meaningful summary of all of allegations,
- The identity of the involved parties (if known),
- The precise misconduct being alleged,
- The date and location of the alleged incident(s) (if known),
- The specific policies implicated,
- A statement of the potential sanctions/responsive actions that could result,
- A statement that CCC presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination,
- A statement that determinations of responsibility are made at the conclusion of the process and that the parties will be given an opportunity to inspect and review all directly related and/or relevant evidence obtained during the review and comment period,
- A statement about CCC’s policy and procedure on retaliation,
- Information on the need for each party to have an Advisor of their choosing and suggestions for ways to identify an Advisor,
- A statement informing the parties that CCC’s policy and procedure prohibits knowingly making false statements, including knowingly submitting false information during the resolution process,
- Detail on how the party may request disability accommodations during the interview process,
- A suggested date and time for an initial meeting (proper time will be given to allow for the

selection of an Advisor)

- The name(s) of the Investigator(s), along with a process to identify, in advance of the interview process, to the Title IX Coordinator any conflict of interest that the Investigator(s) may have, and
- An instruction to preserve any evidence that is directly related to the allegations.

Amendments and updates to the NOA may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various charges.

Notice will be made in writing and will be sent via electronic mail to the CCC-issued email account and mailed via regular mail to the local or permanent address as indicated in official CCC records. Notice is presumed to have been given upon emailing the NOA to the Respondent's CCC-owned email address. The NOA will also be placed in regular mail, postage pre-paid.

11. Resolution Timeline

CCC will make a good faith effort to complete the resolution process within a sixty-to-ninety (60-90) business day time period, including appeal, which can be extended as necessary for appropriate cause by the Title IX Coordinator, who will provide notice and rationale for any extensions or delays to the parties as appropriate, as well as an estimate of how much additional time will be needed to complete the process.

12. Appointment of Investigators

Once the decision to commence a formal investigation is made, the Title IX Coordinator shall appoint a team of two (2) investigators to investigate the allegations. Appointment of investigators typically occurs within two (2) business days of determining that an investigation should proceed.

13. Ensuring Impartiality

Any individual materially involved in the administration of the resolution process may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent. The Title IX Coordinator will vet the assigned Investigator(s) to ensure impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. The parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. The Title IX Coordinator's decision on allegations of bias or conflict of interest is final.

The Formal Grievance Process involves an objective evaluation of all relevant inculpatory and exculpatory evidence obtained. Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or witness.

A Respondent is presumed not to be responsible for the reported misconduct unless and until the Respondent is determined to be responsible for a policy and procedure violation by the applicable preponderance of the evidence standard.

14. Delays in the Investigation Process and Interactions with Law Enforcement

CCC may undertake a short delay in its investigation (several days) if the following circumstances require: a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of parties and/or witnesses, and/or accommodations for disabilities or health conditions, or such circumstances as determined by the Title IX Coordinator in their sole discretion.

CCC will communicate in writing the anticipated duration of the delay and reason to the parties and provide the parties with status updates if necessary. CCC will promptly resume its investigation and resolution process as soon as feasible. During such a delay, CCC will implement supportive measures, as deemed appropriate.

CCC's action(s) are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

15. The Investigation Process

All investigations should be thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all relevant parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary. Either party may submit a written statement to the Title IX Coordinator outlining their position on the allegations.

All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence and expert witnesses (at their own expense), and to fully review and respond to all evidence on the record.

For additional information regarding steps in the investigative process, please see Investigative Process at <https://www.coconino.edu/title-ix>.

16. Role and Participation of Witnesses in the Investigation

Witnesses (as distinguished from the parties) who are employees or students of CCC are expected to cooperate with and participate in CCC's investigation and resolution process. Failure of such witnesses to cooperate with and/or participate in the investigation or resolution process constitutes a violation of this policy and procedure and may warrant discipline.

While in-person interviews for parties and all potential witnesses are ideal, circumstances (e.g., study abroad, summer break) may require individuals to be interviewed remotely. Skype, Zoom, FaceTime, WebEx, or similar technologies may be used for interviews if the Investigator(s) determine that timeliness or efficiency dictate a need for remote interviewing. CCC will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

Witnesses may also provide written statements in addition to being interviewed. If a witness submits a written statement but does not intend to be and is not present for cross examination at a hearing, their written statement may not be used as evidence.

17. Recording of Interviews

No audio or video recording of any kind is permitted during investigation meetings.

18. Evidentiary Considerations in the Investigation

The investigation does not consider:

- a. incidents not directly related to the possible violation, unless they evidence a pattern;
- b. the character of the parties; or
- c. questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the

Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

19. Referral for Hearing

The Title IX Coordinator will refer the matter for a hearing, once the final investigative report is shared with the parties.

The hearing cannot be less than ten (10) business days from the conclusion of the investigation, when the final investigation report is made available to the Parties and the Decision-maker for review and comment, unless all parties, and the Decision-maker agrees to an expedited timeline. This agreement must be in writing.

The Title IX Coordinator will select a Decision-maker that is hired from a list of approved attorneys for any hearing held under the Title IX policy and procedure.

20. Hearing Decision-maker Composition

CCC will designate a single decision-maker. The single Decision-maker will also be the Chair of the hearing. The Decision-maker will not have had any previous involvement with the investigation. The Decision-maker is an out-sourced position. The Decision-maker will not be a CCC employee. The Decision-maker will have had no previous involvement in the matter at hand.

21. Evidentiary Considerations in the Hearing

Any evidence that the Decision-maker determines is relevant and credible may be considered. The hearing does not consider:

- a. incidents not directly related to the possible violation, unless they evidence a pattern;
- b. the character of the parties; or
- c. questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

Previous disciplinary action of any kind involving the Respondent may be considered in determining an appropriate sanction upon a determination of responsibility. This information is only considered at the sanction stage of the process.

The parties, if they so choose, may submit a written impact statement prior to the hearing for the consideration of the Decision-maker at the sanction stage of the process when a determination of responsibility is reached.

After post-hearing deliberation, the Decision-maker renders a determination based on the preponderance of the evidence--whether it is more likely than not that the Respondent violated the policy and procedure as alleged.

22. Notice of Hearing

No less than ten (10) business days prior to the hearing, the Title IX Coordinator will send notice of the hearing to the parties via email to the individual CCC-issued email address. Once emailed, notice will be presumptively delivered.

The notice will contain:

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result.
- The time, date, and location of the hearing and a reminder that attendance is mandatory, superseding all other campus activities.
- Any technology that will be used to facilitate the hearing.
- A list of all those who will attend the hearing, along with an invitation to object to the Decision-maker on the basis of demonstrated bias. This must be raised with the Title IX Coordinator at least two (2) business days prior to the hearing.
- Information on how the hearing will be recorded and on access to the recording for the parties after the hearing.
- A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence, and the party's or witness's testimony and any statements given prior to the hearing will not be considered by the Decision-maker. For compelling reasons, the Decision-maker may reschedule the hearing.
- Notification that the parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present for any questions they may desire to ask. The party must notify the Title IX Coordinator if they do not have an Advisor, and CCC will appoint one. Each party must have an Advisor present. There are no exceptions.
- An invitation to each party to submit to the Decision-maker an impact statement. pre-hearing that the Decision-maker will review during any sanction determination.
- An invitation to contact the Title IX Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least seven (7) business days prior to the hearing.
- Direction that the parties may not bring mobile phones/devices into the hearing.

Hearings for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to this Policy and procedure) and are unable to be resolved prior to the end of term will typically be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeline followed by CCC and remain within the 60-90 business day goal for resolution.

In these cases, if the Respondent is a graduating student, a hold may be placed on graduation and/or official transcripts until the matter is fully resolved (including any appeal). A student facing charges under this policy and procedure is not in good standing to graduate.

23. Virtual Hearings

All hearings will occur virtually by use of technology, specifically WebEx or Zoom technology. Each party will be located in a separate room from the Decision-maker, but will be able to see and hear each other. Witnesses will testify in the same room as the Decision-maker, but not the room where the parties and their Advisors sit. The Title IX Coordinator will arrange to use technology to allow remote testimony without compromising the fairness of the hearing.

24. Pre-Hearing Preparation

The Decision-maker, or designee, after any necessary consultation with the parties, Investigator(s) and/or Title IX Coordinator, will provide the names of persons who will be participating in the hearing, all pertinent documentary evidence, and the final investigation report to the parties at least ten (10) business days prior to the hearing. During the ten (10) business day period prior to the hearing, the parties have the opportunity to review and comment on the final investigation report and available evidence.

The Decision-maker, or designee will also provide the parties a copy of the pre-hearing preparation checklist/document. A copy of the pre-hearing preparation checklist/document may be found on CCC's Title IX webpage: <https://www.coconino.edu/title-ix>.

25. Hearing Procedures

At the hearing, the Decision-maker has the authority to hear and make determinations on all allegations of sexual harassment and/or retaliation and may also hear and make determinations on any additional alleged policy and procedure violations that have occurred in concert with the discrimination, harassment, and/or retaliation, even though those collateral allegations may not specifically fall within the Title IX policy and procedure.

Participants at the hearing will include the Decision-maker, the hearing facilitator, the Investigator(s) who conducted the investigation, the parties, Advisors to the parties, any called witnesses, the Title IX Coordinator and anyone providing authorized accommodations or assistive services.

The Decision-maker will answer all questions of procedure. Anyone appearing at the hearing to provide information will respond to questions on their own behalf.

The Decision-maker will allow witnesses who have relevant information to appear at a portion of the hearing in order to respond to specific questions from the Decision-maker and the parties and will then be excused from attendance.

26. Joint Hearings

In hearings involving more than one Respondent or in which two (2) or more Complainants have accused the same individual of substantially similar conduct, the parties may agree to hear the allegations jointly. All parties must agree to a joint hearing. If one party does not agree, the default will be to hold the hearings separately.

In joint hearings, separate determinations of responsibility will be made for each Respondent with respect to each alleged policy and procedure violation.

27. Refusal to Submit to Cross-Examination and Inferences

The Decision-maker may not rely on any prior statement made by any party or witness at the hearing (including those contained in the investigation report) in the ultimate determination of responsibility, if that party or witness chooses not to submit to cross-examination at the hearing, by either failing to attend the hearing or by attending but refusing to participate in questioning. The Decision-maker may consider evidence provided that is something other than a statement by such a party or witness.

If the party or witness attends the hearing and answers some, but not all, cross-examination questions, the Decision-maker may rely only on those statements related to the cross-examination questions that they answered. The Decision-maker cannot rely on any portion of a statement related to cross-

examination questions that a party or witness refused to answer. Except that, a Decision-maker can rely on statements that are the subject of the allegation itself (e.g., the case is about verbal harassment or a quid pro quo offer), even if the party who allegedly made the statements refuses to attend the hearing or submit to cross-examination.

The Decision-maker may not draw any inference solely from a party's or witness's absence from the hearing or refusal to answer cross-examination or other questions.

If charges of policy and procedure violations other than sexual harassment are considered at the same hearing, the Decision-maker may consider all evidence it deems relevant, may rely on any relevant statement as long as the opportunity for cross-examination is afforded to all parties through their Advisors, and may draw reasonable inferences from any decision by any party or witness not to participate or respond to questions.

If a party's Advisor of choice refuses to comply with CCC's established rules of decorum for the hearing, CCC may require the party to use a different Advisor. If a CCC-provided Advisor refuses to comply with the rules of decorum, the Title IX Coordinator may provide that party with a different Advisor to conduct cross-examination on behalf of that party.

28. Recording Hearings

Hearings (but not deliberations) are recorded by CCC for purposes of review in the event of an appeal. The parties may not record the proceedings and no other unauthorized recordings are permitted.

The Decision-maker, the parties, their Advisors, and appropriate administrators of CCC will be permitted to listen to the recording in a controlled environment determined by the Title IX Coordinator. No person will be given a copy or be allowed to make a copy of the recording.

29. Deliberation, Decision-making, and Standard of Proof

The Decision-maker will deliberate alone to determine, by a preponderance of the evidence, whether the Respondent is responsible or not responsible for the policy and procedure violation(s) in question. The deliberation period is not to exceed five (5) days. The Decision-maker may consider the previously submitted party impact statements in determining appropriate sanction(s), when there is a finding of responsibility as to one or more of the allegations.

The Decision-maker will ensure that each of the parties has an opportunity to review any impact statement submitted by the other party(ies). The Decision-maker may--at their discretion--consider the statements, but they are not binding.

The Decision-maker will then prepare a written deliberation statement and deliver it to the Title IX Coordinator, detailing the determination, rationale, the evidence used in support of its determination, the evidence disregarded, credibility assessments, and any sanctions. This report typically should not exceed three (3) to five (5) pages in length and must be submitted electronically to the Title IX Coordinator within two (2) business days of the end of deliberations, unless the Title IX Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will notify the parties in writing of the extension.

30. Notice of Outcome

Using the deliberation statement, the Title IX Coordinator will prepare a Notice of Outcome, which shall

include the final determination, rationale, and any applicable sanction(s). The Title IX Coordinator will then provide the Notice of Outcome to the parties and their Advisors within five (5) business days of receiving the Decision-maker's deliberation statement. The Notice of Outcome must be shared with the parties simultaneously.

Notification will be made in writing and will be mailed to the local or permanent address of the parties as indicated in official CCC records, or emailed to the parties' CCC-issued email or otherwise approved account. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

For more information about the Notice of Outcome Letter, please see Notice of Outcome at <https://www.coconino.edu/title-ix>.

31. Sanctions

Factors considered when determining a sanction/responsive action may include, but are not limited to:

- a. The nature, severity of, and circumstances surrounding the violation(s)
- b. The Respondent's disciplinary history
- c. Previous allegations or allegations involving similar conduct
- d. The need for sanctions/responsive actions to bring an end to the discrimination, harassment, and/or retaliation
- e. The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment, and/or retaliation
- f. The need to remedy the effects of the discrimination, harassment, and/or retaliation on the Complainant and the community
- g. Any other information deemed relevant by the Decision-maker

The sanctions will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.

The sanctions described in this policy and procedure are not exclusive of, and may be in addition to, other actions taken or sanctions imposed by external authorities.

a. Student Sanctions

The following are the usual sanctions that may be imposed upon students or organizations singly or in combination:

- i. *Warning*: A formal statement that the conduct was unacceptable and a warning that further violation of any CCC policy and procedure, procedure, or directive will result in more severe sanctions/responsive actions.
- ii. *Required Counseling*: A mandate to meet with and engage in external counseling to better comprehend the misconduct and its effects.
- iii. *Probation*: A written reprimand for violation of institutional policy and procedure, providing for more severe disciplinary sanctions in the event that the student is found in violation of any institutional policy and procedure, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.
- iv. *Suspension*: Termination of student status for a definite period of time not to exceed two years and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure as a student at CCC.

- v. *Expulsion*: Permanent termination of student status and revocation of rights to be on any CCC campus for any reason or to attend CCC-sponsored events.
- vi. *Withholding Diploma*: CCC may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities if the student has an allegation pending or as a sanction if the student is found responsible for an alleged violation.
- vii. *Revocation of Degree*: CCC reserves the right to revoke a degree previously awarded from CCC for fraud, misrepresentation, and/or other violation of CCC policies, procedures, or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.
- viii. *Organizational Sanctions*: Deactivation, loss of recognition, loss of some or all privileges (including CCC registration) for a specified period of time.
- ix. *Other Actions*: In addition to or in place of the above sanctions, CCC may assign any other sanctions as deemed appropriate.

b. Employee Sanctions

Responsive actions for an employee who has engaged in harassment, discrimination, and/or retaliation include:

- i. Warning – Verbal or Written
- ii. Performance Improvement/Management Process
- iii. Required Counseling
- iv. Required Training or Education
- v. Probation
- vi. Loss of Oversight or Supervisory Responsibility
- vii. Demotion
- viii. Reassigned to home
- ix. Termination
- x. *Other Actions*: In addition to or in place of the above sanctions, CCC may assign any other sanctions as deemed appropriate.

32. Withdrawal or Resignation While Charges Pending

Students: If a student is a Respondent in a pending matter alleging a violation of the Title IX policy and procedure, CCC may place a hold on a student's ability to graduate and/or to receive an official transcript/diploma.

Should a student decide to not participate in the resolution process, the process proceeds absent their participation to a reasonable resolution. Should a student Respondent permanently withdraw from CCC, the resolution process ends, as CCC no longer has disciplinary jurisdiction over the withdrawn student. A student who withdraws or leaves while the process is pending may not return to CCC. Such exclusion applies to all campuses of CCC. A hold will be placed on their ability to be readmitted. They may also be barred from CCC property and/or events.

However, CCC will continue to address and remedy any systemic issues, variables that may have contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, discrimination, and/or retaliation.

During the resolution process, CCC may put a hold on a responding student's educational record that a disciplinary matter is pending.

Employees: Should an employee Respondent resign with unresolved allegations pending, the resolution process ends, as CCC no longer has disciplinary jurisdiction over the resigned employee. The employee who resigns with unresolved allegations pending is not eligible for rehire with CCC or any campus of CCC, and the records retained by the Title IX Coordinator will reflect that status.

However, CCC will continue to address and remedy any systemic issues, variables that contributed to the alleged violation(s), and any ongoing effects of the alleged harassment or discrimination.

All CCC responses to future inquiries regarding employment references for that individual will include that the former employee resigned during a pending disciplinary matter.

33. Appeals

Any party may file a Request for Appeal by submitting such a request in writing to the Title IX Coordinator within five (5) days of the delivery of the Notice of Outcome Letter. Once the five (5) days have passed, the matter will be deemed closed.

The request for appeal will be forwarded to the Provost or Chief Academic Officer of CCC, acting as the Appeal Chair, for consideration to determine if the request meets the grounds for appeal.

a. Grounds for Appeal

Appeals are limited to the following grounds:

- i. Procedural irregularity that affected the outcome of the matter;
- ii. 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
- iii. An allegation that the Title IX Coordinator, Investigators, or Decision-maker had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter.

The Appeal Chair will deny any request for appeal that does not meet the grounds in this Policy and procedure and will notify the parties and their Advisors in writing of the denial and the rationale. Denials based on lack of grounds shall be communicated to the requesting party within five (5) days of the request for appeal being received by the Appeal Chair.

If any of the grounds in the Request for Appeal meet the grounds in this Policy and procedure, then the appeal chair will:

- i. Notify the other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the investigators and/or the original Decision-maker.
- ii. Provide the other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker a copy of the appeal request with the approved grounds outlined.
- iii. Provide the other party(ies) and their Advisors, the Title IX Coordinator, and when appropriate, the investigators and/or the original Decision-maker five (5) days to submit a response to the portion of the appeal that was approved and involves them.
- iv. Collect any additional information needed and all documentation regarding the approved grounds and the subsequent responses and render a decision in no more than fifteen (15) days from the date the Request for Appeal was filed, barring exigent circumstances. All decisions apply the preponderance of the evidence.

- v. Prepare a Notice of Appeal Outcome letter and send it to all parties simultaneously, which includes the decision on each approved ground and rationale for each decision. The Notice of Appeal Outcome letter will also outline specific instructions for remand or reconsideration of any sanction imposed by the Decision-maker, which CCC is permitted to share according to state or federal law.

The Notice of Appeal Outcome letter will be mailed to the local or permanent address of the parties as indicated in official institutional records and emailed to the parties' CCC-issued email or otherwise approved account. Notice is presumed to have been made once the letter is emailed.

b. **Sanctions Status During the Appeal**

Any sanctions imposed as a result of the hearing are stayed during the appeal process. Supportive measures may be continued or reinstated, subject to the supportive measures procedure in Section VII of this policy and procedure.

CCC may still place holds on official transcripts, diplomas, graduations, and course registration pending the outcome of an appeal when the original sanctions included separation.

34. Long-Term Remedies/Other Actions

Following the conclusion of the resolution process, and in addition to any sanctions implemented, the Title IX Coordinator may implement additional long-term remedies or actions with respect to the parties and/or the campus community that are intended to stop the harassment, and/or retaliation, remedy the effects, and prevent reoccurrence.

These remedies/actions may include, but are not limited to:

- a. Referral to community services including counseling and health services
- b. Referral to the Employee Assistance Program
- c. Education to the individual and/or the community
- d. Permanent alteration of work arrangements for employees
- e. Provision of campus safety escorts
- f. Climate surveys
- g. Policy and procedure modification and/or training
- h. Implementation of long-term contact limitations between the parties
- i. Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Coordinator, certain long-term support or measures may also be provided to the parties even if no policy and procedure violation is found.

When no policy and procedure violation is found, the Title IX Coordinator will address any remedies owed by CCC to the Respondent to ensure that the Respondent did not experience effective denial of educational access.

CCC will maintain the privacy of any Party subject to any long-term remedies/actions/measures, provided doing so does not impair CCC's ability to provide these services.

35. Failure to Comply with Sanctions and/or Interim and Long-term Remedies and/or Responsive Actions

All parties are expected to comply with the assigned sanctions, responsive actions, and/or corrective

actions within the timeframe specified by the final Decision-maker (including the Appeal Chair).

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from CCC.

A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator.

36. Recordkeeping

CCC will maintain for a period of seven years records of:

- a. Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under federal regulation;
- b. Any disciplinary sanctions imposed on the Respondent;
- c. Any remedies provided to the Complainant designed to restore or preserve equal access to CCC's education program or activity;
- d. Any appeal and the result therefrom;
- e. Any Informal Resolution and the result therefrom;
- f. All materials used to train Title IX Coordinators, investigators, Decision-makers, and any person who facilitates an Informal Resolution process. CCC will make these training materials publicly available on CCC's website. (Note: If CCC does not maintain a website, CCC must make these materials available upon request for inspection by members of the public.); and
- g. Any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment, including:
 - i. The basis for all conclusions that the response was not deliberately indifferent;
 - ii. Any measures designed to restore or preserve equal access to CCC's education program or activity; and
 - iii. If no supportive measures were provided to the Complainant, document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

CCC will also maintain any and all records in accordance with state and federal laws. CCC will follow the destruction of records policy and procedure as outlined by the state of Arizona.

37. Disabilities Accommodations in the Resolution Process

CCC is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to CCC's resolution process. Anyone needing such accommodation should contact the Title IX Coordinator and request the accommodation. The Title IX Coordinator shall seek consultation from the college Disability Resource Services Manager (for students) or Human Resources (for employees).

38. Mandatory Training

This policy and procedure require that annual training for the Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process will include:

- a. the definition of sexual harassment under this policy and procedure,
- b. the scope of the CCCs education program or activity,
- c. how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and
- d. how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

Decision-makers will receive annual training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant.

Investigators will receive annual training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.

Any materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.

Revision of this Policy and Procedure

This policy and procedures supersede any previous policy and procedure(ies) addressing Title IX sexual harassment and discrimination. The policy and procedure (administrative regulation) will be reviewed and updated as needed by the Title IX Coordinator, in consultation with any other stakeholders deemed necessary by the Title IX Coordinator and upon approval by the Executive Leadership Council (procedure) and District Governing Board (policy) of CCC. CCC reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

During the resolution process, the Title IX Coordinator may make minor modifications to procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules. CCC legal may also vary procedures materially with notice (on the institutional website, with the appropriate effective date identified) upon determining that changes to law or regulation require policy and procedure or procedural alterations not reflected in this policy and procedures.

If government laws or regulations change – or court decisions alter – the requirements in a way that impacts this document, this document will be construed to comply with the most recent government regulations or holdings.

This document does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such policies and codes, generally.

This policy and procedures are effective August 14, 2020.

ATIXA 2020 one policy, two procedures model. Use and adaptation of this model with citation to ATIXA is permitted through a limited license to Maricopa County Community College District and Coconino Community College due to a memorandum of agreement with the Maricopa County Community College District all other rights.

References

U.S. Department of Education regulations applicable to Title IX

Procedure History

08/14/2020 New and required by law so was not approved by Executive Leadership Council

Legal Review

August 2020 (Reviewed by Maricopa County Community College District Legal Counsel)