

STATE BOARD FOR TECHNICAL AND COMPREHENSIVE EDUCATION

PROCEDURE

PROCEDURE NUMBER: 8-5-101.2

PAGE: 1 of 16

TITLE: SEXUAL HARASSMENT UNDER TITLE IX

**POLICY
REFERENCE NUMBER: 8-5-101**

**DIVISION OF
RESPONSIBILITY: Human Resource Services**

DATE OF LAST REVISION: May 12, 2022

DISCLAIMER

PURSUANT TO SECTION 41-1-110 OF THE CODE OF LAWS OF SC, AS AMENDED, THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE SC STATE BOARD FOR TECHNICAL AND COMPREHENSIVE EDUCATION / THE SC TECHNICAL COLLEGE SYSTEM. THE STATE BOARD FOR TECHNICAL AND COMPREHENSIVE EDUCATION/THE SC TECHNICAL COLLEGE SYSTEM RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT, IN WHOLE OR IN PART. NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT.

I. Procedural Overview

Under Title IX of the Education Amendments of 1972 (20 U.S.C. 1681) and its implementing regulations (34 C.F.R. 106), sexual harassment is a form of prohibited sex discrimination. Title IX provides that, "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance."

The South Carolina Technical College System ("SCTCS" or "System Office") is committed to maintaining a work and educational environment that is free from all forms of unlawful discrimination on the basis of sex, including sexual harassment and sexual assault. Any questions regarding Title IX may be referred to the System Office/College's Title IX coordinator. The System Office/College must prominently display the contact information required for the Title IX coordinator (name or title, telephone number, e-mail address, and office address) on its website, if any, and in each handbook, catalog, or publication that it makes available to persons entitled to a notification. In addition, the System Office/College should include contact information for the U.S. Department of Education's Office of Civil Rights.

STATE BOARD FOR TECHNICAL AND COMPREHENSIVE EDUCATION

PROCEDURE

PROCEDURE NUMBER: 8-5-101.2

PAGE: 2 of 16

This Procedure applies to behavior or complaints alleging acts of sexual harassment on System Office/College property, or in an education program or activity. The Title IX Regulations exclude any education program or activity that does not occur in the United States. In order to proceed through the Title IX sexual harassment grievance process detailed herein, a formal complaint must be filed with or by a Title IX coordinator and meet the following elements:

- A. The alleged activity falls within the definition of sexual harassment as defined in Section II (CC.);
- B. The alleged activity occurred within a college's education program or activity; and
- C. The alleged activity occurred against a person physically located in the United States.

Complaints against employees reported to the System Office/College's Title IX coordinator which do not meet the above elements shall be addressed under the process outlined in SBTCE Procedure 8-5-100.1 (Disciplinary Action), which addresses behavior/conduct that does not meet acceptable professional standards. Behavior/conduct that does not meet the elements outlined in this Procedure may still violate SBTCE Procedure 8-5-101.1 (Non-Discrimination, Anti-Harassment, and Sexual Misconduct) and/or result in disciplinary action against an employee in accordance with applicable System Office policies/procedures

Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment) to the Title IX Coordinator at any time, including non-business hours, via the phone number, e-mail address or office mailing address listed for the Title IX coordinator.

Irrespective of whether a report of sexual harassment is anonymous, if the System Office/College has actual knowledge of sexual harassment or allegations of sexual harassment in the System Office/College's education program or activity against a person in the United States, it must respond promptly in a manner that is not deliberately indifferent, meaning not clearly unreasonable in light of the known circumstances.

In some cases, campus authorities may become aware of allegations of sexual harassment via local law enforcement. These allegations may also be addressed by this Procedure. The State Board for Technical and Comprehensive Education and its member Colleges encourage the prompt reporting of sexual harassment to campus security and local law enforcement. The complainant may also file a criminal report regarding the alleged conduct. However, Title IX investigations are separate from criminal investigations. In some cases, the System Office/College may need to temporarily delay the fact-finding portion of a Title IX investigation while law enforcement gathers evidence. Contact information for local law enforcement and campus security is available on the respective System Office/College's website.

STATE BOARD FOR TECHNICAL AND COMPREHENSIVE EDUCATION

PROCEDURE

PROCEDURE NUMBER: 8-5-101.2

PAGE: 3 of 16

The System Office/Colleges are prohibited from intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by Title IX.

II. Definitions

When used in this document, unless the context requires other meaning,

- A. “Actual Knowledge” means notice of sexual harassment or allegations of sexual harassment to a System Office/College’s Title IX coordinator or any official of the System Office/College who has authority to institute corrective measures on behalf of the college.
- B. An “Advisor” is someone who is present to help the complainant or respondent understand the proceedings and to conduct cross-examination on behalf of the party during a live hearing.
- C. An “Appeals Officer” is a person designated by the System Office/College to hear an appeal of a dismissal of a formal complaint or a decision-maker determination.
- D. An “Approved Method of Notification” means any communication from System Office/College personnel through a communication channel to which the employee has consented or which confirms receipt of the communication by the employee, such as a hand-delivered letter, restricted mail delivery services, or e-mail. An employee who communicates with the System Office/College via e-mail or otherwise provides an e-mail address in connection with communications relating to a grievance thereby consents to the service of documents and all other correspondence associated with the grievance by e-mail, and the date and time of such e-mail(s) shall be deemed the date and time of service.
- E. “Calendar Days” means (1) for the Colleges, any day of the week in which classes are in session and (2) for the System Office, any weekday in which it is open during business hours.
- F. “Chief Human Resources Officer” means the Administrative Officer at the college who has overall management responsibility for employee services, or his/her designee.
- G. “Close of Business” means the time that the administrative offices of the System Office/College closes on that specific workday.
- H. “College” means any college in the South Carolina Technical College System.

STATE BOARD FOR TECHNICAL AND COMPREHENSIVE EDUCATION

PROCEDURE

PROCEDURE NUMBER: 8-5-101.2

PAGE: 4 of 16

- I. “Complainant” means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.
- J. “Consent” is clear, knowing, and voluntary agreement. Consent is active, not passive. Silence, in and of itself, cannot be interpreted as consent. Consent can be given by words or actions, as long as those words or actions create mutually understandable clear permission regarding willingness to engage in (and the conditions of) sexual activity. Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity. Previous relationships or prior consent cannot imply consent to future sexual acts.
- K. “Dating Violence” means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, where the existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship; the type of relationship; and the frequency of interaction between the persons involved in the relationship.
- L. A “Decision-Maker” is someone (who cannot be the same person as the Title IX coordinator or the investigator) who issues a written determination with findings of fact, conclusions about whether the alleged conduct occurred, rationale for the result as to each allegation, any disciplinary actions imposed on the respondent, and whether remedies will be provided to the complainant.
- M. “Domestic Violence” includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction.
- N. “Education Program or Activity” includes locations, events, or circumstances over which the System Office/College exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the System Office/College.
- O. “Exculpatory Evidence” is evidence that creates a reasonable doubt that a respondent engaged in the conduct alleged in a complaint.

STATE BOARD FOR TECHNICAL AND COMPREHENSIVE EDUCATION

PROCEDURE

PROCEDURE NUMBER: 8-5-101.2

PAGE: 5 of 16

- P. “Fondling” is the touching of the private parts of another person for the purpose of sexual gratification without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because his/her temporary or permanent mental incapacity.
- Q. “Formal Complaint” means a document filed (including through electronic submission) by a complainant with the Title IX coordinator or signed by the Title IX coordinator alleging sexual harassment against a respondent and requesting that the System Office/College investigate the allegation of sexual harassment. A report of behavior to the Title IX coordinator or other System Office/College official does not constitute a formal complaint.
- R. “Incest” is sexual intercourse between persons who are related to each other within degrees wherein marriage is prohibited by law (see S.C. Code Ann. § 16-15-20).
- S. “Inculpatory Evidence” is evidence indicating that a respondent engaged in the conduct alleged in the complaint.
- T. “Instructor” means any person employed by the System Office/College to conduct classes.
- U. An “Investigator” is someone who acts as a neutral party in the investigation and provides a detailed, unbiased report regarding the findings of the investigation.
- V. “Official with Authority” means an official of the System Office/College with authority to institute corrective measures. Officials with authority are those personnel designated by the System Office/College who would be considered to have actual knowledge upon receiving notice of alleged sexual harassment.
- W. “Preponderance of the Evidence” is the standard used to evaluate the evidence for purposes of making findings and drawing conclusions for an investigation or hearing conducted under this Procedure. The preponderance of evidence standard means it is more likely than not that the conduct complained of occurred.
- X. A “Report” is notice from a complainant of alleged sexual harassment, other than a formal complaint, made to the Title IX coordinator or an official with authority.
- Y. “Rape” is the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

STATE BOARD FOR TECHNICAL AND COMPREHENSIVE EDUCATION

PROCEDURE

PROCEDURE NUMBER: 8-5-101.2

PAGE: 6 of 16

- Z. “Respondent” means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment as defined herein.
- AA. “Retaliation” is adverse action taken against an individual for engaging in protected activity. The System Office/College or other person(s) may not intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by 34 C.F.R. Part 106 (Title IX), 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 Title IX. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation.
- BB. “Sexual Assault” is defined as rape, fondling, incest, and statutory rape as defined herein.
- CC. “Sexual Harassment” means conduct on the basis of sex that satisfies one or more of the following: (1) An employee of the System Office/College conditioning the provision of an aid, benefit, or service of the System Office/College on an individual’s participation in unwelcome sexual conduct (i.e. quid pro quo); (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the college’s education program or activity; or (3) sexual assault, dating violence, domestic violence, or stalking as defined herein.
- DD. “Staff” means any person employed by the System Office/College for reasons other than conducting classes.
- EE. “Stalking” means engaging in a course of conduct directed at a specific person that would cause a reasonable person to (1) fear for his or her safety or the safety of others; or (2) suffer substantial emotional distress. For the purposes of this definition: “Course of conduct” means two or more acts, including, but not limited to, acts which the stalker directly, indirectly, or through third parties, by any action, method, device, or means follows, monitors, observes, surveils, threatens, or communicates to or about, a person, or interferes with a person’s property; “reasonable person” means a person of ordinary prudence and action under the circumstances in which the course of conduct occurs; and “substantial emotional distress” means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

STATE BOARD FOR TECHNICAL AND COMPREHENSIVE EDUCATION

PROCEDURE

PROCEDURE NUMBER: 8-5-101.2

PAGE: 7 of 16

- FF. “Statutory rape” is sexual intercourse with a person who is under the statutory age of consent (see S.C. Code Ann. § 16-3-655).
- GG. “Student” means an individual currently enrolled in a program and/or registered for the current or upcoming academic term.
- HH. “Supportive Measures” are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent. Supportive Measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.
- II. A “Third-Party Reporter” is an individual who files a complaint on behalf of another individual alleging violation of this Procedure.
- JJ. A “Title IX Coordinator” is an employee designated by the System Office/College to coordinate its efforts to comply with and carry out its responsibilities under 34 C.F.R. Part 106 (Title IX), including any investigation of any complaint communicated to the System Office/College alleging its noncompliance with Title IX or alleging any actions which would be prohibited by Title IX.
- III. Receipt of Reports and Formal Complaints
- A. Reports
- A report of alleged sexual harassment to a Title IX coordinator or any official of the System Office/College who has authority constitutes actual knowledge. The System Office/College must maintain a list of System Office/College personnel who are considered officials with authority to institute corrective measures and may name additional responsible employees who must report sexual harassment to the Title IX coordinator. An official with authority who receives a report of alleged sexual harassment must promptly notify the Title IX coordinator of the report. A report is not considered to be a formal complaint but initiates the offering of supportive measures.

STATE BOARD FOR TECHNICAL AND COMPREHENSIVE EDUCATION

PROCEDURE

PROCEDURE NUMBER: 8-5-101.2

PAGE: 8 of 16

B. Formal Complaints

A Title IX coordinator may receive a formal complaint alleging sexual harassment by phone, mail, e-mail, or any other approved method of notification. Receipt of a formal complaint must be acknowledged in writing by the Title IX coordinator to the complainant within three (3) calendar days of submission of the complaint. Formal complaints may be initiated by a complainant or the Title IX coordinator. Upon determining a formal complaint meets the elements set forth in Section I of this Procedure, the System Office/College's sexual harassment grievance process is initiated.

IV. Supportive Measures

Upon receiving or being made aware of a report alleging sexual harassment, regardless of whether a formal complaint has been filed, the Title IX coordinator must provide supportive measures to both the complainant and the respondent. The Title IX coordinator is responsible for coordinating the effective implementation of supportive measures and must consider a complainant's wishes with respect to measures provided. Measures provided shall be kept confidential unless disclosure is necessary to provide the measures, such as in the case of a no-contact order. Such measures should restore or preserve equal access to the education program or activity without unreasonably burdening the other party.

V. Sexual Harassment Grievance Process

The sexual harassment grievance process must include reasonably prompt time frames determined by the System Office/College and written into policy for conclusion of the grievance process (from the filing of a formal complaint to the written determination by the decision-maker), informal resolutions, and appeals. The System Office/College's policy must also include an explanation and examples of time extensions beyond the published policy, and such extensions must be temporary and justified by good cause.

Emergency removal of a respondent from an educational program or activity is allowable only after conducting a safety and risk analysis and determining there is an immediate threat to the physical health or safety of any employee or other individual arising from the allegations of sexual harassment that justifies removal. The respondent must be provided with notice of the removal and an opportunity to challenge the decision immediately following the removal. Such a challenge must be made to the Title IX coordinator in writing through an approved method of notification within two (2) calendar days of the removal and include a rationale for why the emergency removal should be rescinded. A respondent may not be subject to an emergency removal or placed on leave without full and appropriate consideration of applicable disability laws, such as Section 504 of the Rehabilitation Act and the Americans with Disabilities Act.

STATE BOARD FOR TECHNICAL AND COMPREHENSIVE EDUCATION

PROCEDURE

PROCEDURE NUMBER: 8-5-101.2

PAGE: 9 of 16

Alternatively, the System Office/College can place a respondent on leave during the pendency of the grievance process herein without conducting a safety and risk analysis or otherwise making the determination(s) under the aforementioned emergency removal process. Any such leave shall be an investigatory suspension without pay in accordance with SBTCE Procedure 8-5-100.1 (Disciplinary Action). If placed on leave/investigatory suspension without pay, instructors or staff with grievance rights under the State Employee Grievance Procedure Act may initiate a grievance pursuant to SBTCE Procedure 8-6-100.1 (Grievances and Appeals).

A. Dismissal of a Formal Complaint

The System Office/College must dismiss formal complaints alleging sexual harassment if the conduct in the alleged complaint does not meet the definition of sexual harassment as contained herein; if the conduct did not occur in the college's education program or activity; or if the conduct did not occur against a person in the United States. However, the complaint may be investigated and/or result in disciplinary action against an employee in accordance with SBTCE Procedure 8-5-100.1(Disciplinary Action) if it violates SBTCE Procedure 8-5-101.1 (Non-Discrimination, Anti-Harassment and Sexual Misconduct) or any other System Office policy/procedure.

The System Office/College may dismiss a formal complaint under this Procedure if, at any time, a complainant notifies the Title IX coordinator that the he or she wishes to withdraw the complaint; if the respondent is no longer employed at the System Office/College; or if specific circumstances prevent the System Office/College from gathering evidence sufficient to reach a determination. If a formal complaint is dismissed, written notice containing reason(s) for the dismissal must be made by an approved method of notification and provided to both parties. Dismissal of a formal complaint can be appealed.

B. Notice of Allegations

Upon receiving a formal complaint alleging sexual harassment, written notice of the allegation(s) ("Notice of Allegations") must be provided within seven (7) calendar days to both the complainant and the respondent. The written notice must be made by an approved method of notification and include:

1. The identities of the parties involved in the incident;
2. The conduct allegedly constituting sexual harassment;
3. The date and location of the alleged incident;
4. Notice of the System Office/College's sexual harassment grievance process, to include information regarding its informal resolution process, if available;

STATE BOARD FOR TECHNICAL AND COMPREHENSIVE EDUCATION

PROCEDURE

PROCEDURE NUMBER: 8-5-101.2

PAGE: 10 of 16

5. A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility will be made upon conclusion of the grievance process;
6. Notice as to whether the System Office/College's Disciplinary Action Procedure prohibits knowingly making or submitting false information during the grievance process; and
7. Notice that the parties may have an advisor of their choice.

Such notice of allegations must be provided at least three (3) calendar days prior to any initial interviews or meetings to allow the respondent sufficient time to respond to the allegations. Notice of additional allegations added after the initial notice must also be provided in writing through an approved method of notification.

C. Advisors

Both the complainant and respondent may have an advisor of their choosing to be present during meetings with System Office/College officials (such as the Title IX coordinator or investigator), interviews, and review of materials related to the complaint. Both the complainant and respondent must have an advisor present at the hearing whose sole purpose is to conduct cross-examination on behalf of the party. A party who does not bring an advisor of their choosing to the hearing shall be assigned an advisor by the System Office/College. In the event that neither a party nor their advisor appears at the hearing, the System Office/College must provide an advisor to appear on behalf of the non-appearing party. An assigned advisor may or may not be an employee of the System Office/College.

D. Investigation

1. Investigative Process

Upon receipt of a formal complaint of allegations of sexual harassment, the System Office/College must initiate an investigation led by an impartial investigator whose purpose is to collect and summarize evidence. The person(s) investigating may not also serve as the Title IX coordinator or decision-maker. The System Office/College must ensure that the burden of proof and burden of gathering evidence sufficient to reach a determination lies on the System Office/College and not the parties involved. Parties must receive equal opportunity to present witnesses and evidence. Such evidence must be submitted to the investigator within ten (10) calendar days upon receipt of the Notice of Allegations. Written notice must be provided to a party when the party's participation in a meeting with the investigator is invited or expected. The notice must include the date, time, and location of the meeting; the expected participants; the meeting's purpose; and must allow up to three (3) calendar

STATE BOARD FOR TECHNICAL AND COMPREHENSIVE EDUCATION

PROCEDURE

PROCEDURE NUMBER: 8-5-101.2

PAGE: 11 of 16

days, although this period may be shortened if mutually agreed upon by the parties. Investigators may record interviews with parties and witnesses. Such recordings may be included in the investigative report if relevant, either by transcription with irrelevant information redacted or by recording with irrelevant audio removed.

The investigative process should be completed within approximately thirty (30) to forty-five (45) calendar days from receipt of the formal complaint. Circumstances may warrant additional time to complete the investigative process.

2. Review of Evidence

Before an investigator issues a report, both parties must be allowed at least ten calendar days to (1) review evidence gathered during the investigation that is directly related to the allegations raised in the formal complaint and (2) submit a written response to the evidence. Investigators may but are not required to share such responses to the other party. Should the System Office/College discover additional evidence resulting from further investigation prompted by a party's initial response to evidence, the required time of ten (10) calendar days must again be provided for a party to review and respond to the evidence. Notification of any such additional evidence for review shall be made to the parties in writing by an approved method of notification. Upon conclusion of the investigation, the investigator shall generate a written report within seven (7) calendar days unless this time period is extended for an additional five (5) calendar days upon written notice to the parties with an explanation for the extension. Privileged information will not be provided, and treatment records of a party may only be provided to the other party with written consent.

3. Investigative Report

The investigator(s) must create a report that fairly summarizes all relevant inculpatory and exculpatory evidence and distribute the report to the parties and their advisors at least ten (10) calendar days prior to the scheduled hearing. The investigative report should include a description of procedural steps taken during the investigation and a summary of evidence. Only evidence relevant to the allegations of sexual harassment shall be included in the investigative report. Prior sexual history is not deemed relevant (1) 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 (2) 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.

STATE BOARD FOR TECHNICAL AND COMPREHENSIVE EDUCATION

PROCEDURE

PROCEDURE NUMBER: 8-5-101.2

PAGE: 12 of 16

Parties may provide written responses to the investigative report, which shall be provided to the decision-maker at least one calendar day in advance of the hearing.

E. Hearings

The System Office/College's sexual harassment grievance process must provide for a live hearing with cross-examination of parties and witnesses. The parties may bring an advisor of their choice to conduct the cross-examination. Should a party not have an advisor, the System Office/College must provide an advisor at no cost.

Parties must be notified of a scheduled hearing at least ten (10) calendar days prior to the hearing through an approved method of notification that shall include the date, time, and location of the hearing.

At the live hearing, advisors of the parties shall cross-examine parties and witnesses who have provided information relevant to the complaint or response thereto. The decision-maker does not have to allow witnesses who are solely character witnesses. The decision-maker must allow the advisor for each party to ask the other party and any witnesses relevant questions and follow-up questions. Such cross-examination must be conducted directly, orally, and in real time by the party's advisor of choice and may occur with the parties in separate rooms using technology that enables participants to simultaneously see and hear the person answering questions. Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a question while under cross-examination or otherwise, the decision-maker must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. Questions for cross-examination may be presented in advance to the decision-maker so that relevancy may be determined prior to the hearing. However, providing cross-examination questions in advance does not preclude the advisor(s) from asking additional questions not provided in advance to the decision-maker.

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove 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.

STATE BOARD FOR TECHNICAL AND COMPREHENSIVE EDUCATION

PROCEDURE

PROCEDURE NUMBER: 8-5-101.2

PAGE: 13 of 16

At the request of either party, the System Office/College must provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker and parties to simultaneously see and hear the party or the witness answering questions. An audio or visual recording or a transcript of the hearing must be created and made available for review and inspection.

F. Determinations

Determinations must be made using the Preponderance of the Evidence standard. Determinations may be made at the conclusion of the live hearing or within three (3) calendar days of the live hearing's conclusion and shall be provided in writing by an approved method of notification simultaneously to both parties. A written determination shall include:

1. Identification of the allegation(s) of sexual harassment;
2. A description of the process of investigation, from receipt of the complaint through the determination, to include any notifications to the parties, interviews, site visits, methods used to gather evidence, and hearings held;
3. Findings of fact supporting the determination;
4. Conclusions regarding the application of any of the System Office/College's policies to the facts
5. A statement of, and rationale for, the determination regarding each allegation, to include disciplinary action(s) for the respondent.
6. Information regarding the opportunity to appeal the determination.

A determination is considered final ("Final Determination") either on the date that the System Office/College provides the parties with the written decision on an appeal submitted in accordance with Section V(G) herein or upon expiration of the period to timely file an appeal.

G. Appeals

Both parties must be afforded the opportunity to appeal dismissal of a formal complaint as well as a determination on the following grounds:

1. A procedural irregularity affecting the outcome;
2. New evidence not available at the time of the determination that could affect the outcome; or
3. Conflict of interest or bias on the part of the Title IX coordinator, investigator(s), or decision-maker which affected the outcome.

STATE BOARD FOR TECHNICAL AND COMPREHENSIVE EDUCATION

PROCEDURE

PROCEDURE NUMBER: 8-5-101.2

PAGE: 14 of 16

If a party wishes to appeal, an appeal must be made within ten (10) calendar days of dismissal of a formal complaint or delivery of a written determination. If a party files an appeal, the other party must be notified by an approved method of notification. A party wishing to appeal must do so by submitting an appeal in writing to the Title IX coordinator, who will assign review of the appeal to an appeals officer within three (3) calendar days of receipt. The appeal must include a statement indicating why the appealing party disagrees with dismissal of the complaint or the determination, and specify on which ground(s) the appeal is being made. The System Office/College must ensure that the appeals officer is not the Title IX coordinator, investigator(s), or decision-maker who reached the original determination. A decision by an appeals officer must be rendered within three (3) calendar days of receipt by the appeals officer and provided in writing to both parties simultaneously through an approved method of notification. Should an extension be necessary, the appeals officer may provide the parties with written notice extending determination of the appeal for five (5) calendar days with an explanation for the extension. The results of an appeal and the rationale for the determination must be provided in writing simultaneously to both parties.

Instructors or staff with grievance rights under the State Employee Grievance Procedure Act may initiate any applicable grievance(s) resulting from a Final Determination under Section V(F). Instructors and staff wishing to pursue a grievance must follow the grievance steps outlined in SBTCE Procedure 8-6-100.1 (Grievances and Appeals).

VI. Informal Resolution

Upon receipt of a formal complaint, the System Office/College may choose to introduce the option of a voluntary informal resolution process. Informal resolution is a voluntary process that must be agreed upon in writing by both parties, and the documented agreement must notify the parties of their right to withdraw at any time from the informal resolution process. The System Office/College may not offer or facilitate an informal resolution process to resolve complaints of sexual harassment where the complainant is a student and the respondent is an employee. The informal resolution process may result in actions for a respondent.

The System Office/College may not, under any circumstance, require a party to waive the right to an investigation and adjudication of formal complaints under Title IX. Similarly, the System Office/College may not require the parties to participate in the informal resolution of a formal complaint or offer an informal resolution process unless a formal complaint is filed.

STATE BOARD FOR TECHNICAL AND COMPREHENSIVE EDUCATION

PROCEDURE

PROCEDURE NUMBER: 8-5-101.2

PAGE: 15 of 16

Informal resolution, which does not involve a full investigation and adjudication, may be offered at any time prior to reaching a final determination as long as:

- A. The System Office/College does not require informal resolution participation waiver of the right to an investigation and adjudication of formal complaints of sexual harassment consistent with this section; and
- B. The parties receive a written notice that includes the following:
 - 1. The allegations;
 - 2. The requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations;
 - 3. That at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint;
 - 4. Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared; and
 - 5. Signature blocks for the parties' voluntary, written consent to the informal resolution process.

The complainant and respondent both have the right to terminate the informal resolution process at any time and proceed with the formal grievance process. Furthermore, the Title IX coordinator or designee may, where appropriate, terminate or decline to initiate informal resolution and proceed with formal resolution instead. In such cases, statements or disclosures made by the parties in the course of the informal resolution process may be considered in any subsequent formal proceedings.

VII. Disciplinary Actions

Following an investigation of allegations presented before the decision-maker, a finding of harassment under Title IX will be addressed on a case-by-case basis, in accordance with SBTCE Procedure 8-5-100.1 (Disciplinary Action).

VIII. Recordkeeping

The System Office/College must maintain for seven (7) years from the initial report or formal complaint of sexual harassment, records of:

- A. Any sexual harassment investigation, including any final determination thereof, any required recording or transcript, any actions imposed on the respondent, and any remedies provided to the complainant.

STATE BOARD FOR TECHNICAL AND COMPREHENSIVE EDUCATION

PROCEDURE

PROCEDURE NUMBER: 8-5-101.2

PAGE: 16 of 16

- B. Any appeal and its result.
- C. Any informal resolution and its result.
- D. Records of any action, including any supportive measures, taken in response to an informal or formal complaint of sexual harassment.

The System Office/ College must also maintain for a period of seven (7) years all materials used to train Title IX coordinators, investigators, decision-makers, and those who conduct the informal resolution process with regard to sexual harassment. This requirement applies only to complaints (informal or formal) received on or after August 14, 2020.

IX. Confidentiality and Privacy

The System Office/ College must keep confidential the identity of complainants, respondents, third-party reporters and witnesses involved in the grievance process, except as may be permitted by FERPA, as required by law, or as necessary to carry out a Title IX proceeding. The System Office/College must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the System Office/ College to provide the supportive measures. If a formal complaint is made to a Title IX coordinator, confidentiality of the complainant may not be maintained. However, both parties and their advisors may be required to sign non-disclosure or privacy notices requesting that information shared as part of the sexual harassment grievance process not be disclosed.