

Title IX Sexual Harassment Complaint Procedures

Introduction

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

Formal complaint: A formal complaint is a document filed by the complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the College investigate the allegation of sexual harassment. Note: At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in an educational program or activity of the College at which the formal complaint is filed.

Consent: “Consent” must be informed, voluntary, and mutual and can be withdrawn at any time. There is no consent when there is force, expressed or implied, or when coercion, intimidation, threats, or duress is used. Whether or not a person has taken advantage of a position of influence over another person may be a factor in determining consent. Silence or absence of resistance does not imply consent. Past consent to sexual activity with another person does not imply ongoing future consent with that person or consent to that same sexual activity with another person.

Incapacitation: An individual who is incapacitated is unable to give consent to sexual contact. States of incapacitation include sleep, unconsciousness, intermittent consciousness, intoxication, or any other state where the individual is unaware that sexual contact is occurring or is otherwise unable to give informed and voluntarily consent. Incapacitation may also exist because of a mental or developmental disability that impairs the ability to consent to sexual contact. Example: A person who is taking pain medication and falls asleep under the influence of the medication can be incapacitated and not be able to give consent to sexual contact.

Sexual Misconduct: Committing sexual abuse, sexual assault, sexual harassment, sexual exploitation, or statutory rape, as defined below or under Alabama state law.

Harassment: The striking, shoving, kicking, or otherwise touching or making physical contact in regard to another for the purpose of harassing, annoying or alarming; and/or directing abusive or obscene language or making an obscene gesture toward someone for the purpose of harassing, annoying, or alarming. Example: Making or using persistent derogatory comments, epithets, or slurs that place a person in a hostile or fearful environment or where the person’s safety is in jeopardy.

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

- x A school employee conditioning education benefits on participating in unwelcome sexual conduct (i.e. quid pro quo);
- x Unwelcomed conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school’s education program or activity; or

a child in common, by a person cohabitating with or has cohabitated with the victim as a spouse, 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 (34 U.S.C.12291(a)(8)).

In Alabama, domestic violence includes felony and misdemeanor crimes of violence committed by a current or former spouse, parent, child, any person with whom the defendant has a child in common, a present or former household member, or a person who has or had a dating or engagement relationship with the defendant (Alabama Code Section 13A, Article 7 Domestic Violence in 1st, 2nd, and 3rd Degrees).

Dating Violence: Dating violence means violence committed by a person –

- a. Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- b. Where the existence of such a relationship will be determined based on a consideration of the following factors:
 - x The length of the relationship,
 - x The type of relationship,
 - x The frequency of interaction between the persons involved in the relationship (34 U.S.C. 12291(a)(10)).

In Alabama, dating violence is covered under Alabama Code Section 13A, Article 7 Domestic Violence in 1st, 2nd, and 3rd Degrees.

Stalking: Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to a) fear for his or her safety or the safety of others; or b) suffer substantial emotional distress (34 U.S.C.12291(a)(30)).

In Alabama, stalking is when a person intentionally and repeatedly follows or harasses another person and who makes a threat, either expressed or implied, with the intent to place that person in reasonable fear of death or serious bodily harm (13A-6-90 Stalking in the first degree) or a person who, acting with an improper purpose, intentionally and repeatedly follows, harasses, telephones, or initiates communication, verbally, electronically, or otherwise, with another person, any member of the other person's im

do have the option not to report the incident to campus law enforcement, or local law enforcement. In those cases, the victim may still seek assistance confidentially from Crisis Services of North Alabama or any other victim service agency of their choosing.

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educational environment, or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security, and monitoring of certain areas of the campus, and other similar measures. The 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 College to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

Supportive measures will be offered to the Complainant within five (5) business days of receipt of the complaint.

Supportive measures will be offered to the Respondent simultaneously with the Notice of Allegations.

D. Standard of Evidence for Determining Responsibility

For the purposes of College Title IX procedures, the College will use a “preponderance of evidence” standard for determining responsibility. Preponderance of the Evidence means evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is evidence which as a whole show that the fact sought to be proved is more probable than not.

E. Formal Complaint Process

A formal complaint must be submitted in electronic (e-mail) or written format to the Title IX Coordinator and must be signed by the Complainant. In the event that under the circumstances a formal complaint should be pursued notwithstanding a Complainant’s desire not to file a formal complaint, the Title IX Coordinator may sign the complaint.

The complaint must include the following:

- x the date of the original complaint,
- x names of Complainant and Respondent,
- x facts and description of the complaint, and
- x the request to investigate complaint.

A Complainant must be participating in or attempting to participate in a college sponsored program or activity at the time the complaint is filed.

F. Dismissal of Formal Complaint

The College may dismiss a formal complaint or allegations therein if:

- x the Complainant informs the Title IX Coordinator in writing that the Complainant desires to withdraw the formal complaint or allegations therein,
- x the Respondent is no longer enrolled or employed by the school, or

G. Notice of Allegations

The Title IX Coordinator will provide simultaneous written notice of allegations, including sufficient details, and intent to investigate to the Complainant and Respondent

Maker training during the current academic year. If there are multiple Hearing Decision Makers, one shall be designated as the Primary Decision Maker. The Hearing Decision Maker(s) will notify the Complainant, Respondent, their respective advisors, Title IX Coordinator, Title IX Investigator, and witnesses named in the final report of the live hearing date. The live hearing date must provide the Complainant, Respondent, and their respective advisors with no less than ten (10) business days to review the final investigative report and all supporting evidence.

The hearing must be a live, recorded hearing with the opportunity for both advisors to conduct cross-examinations. The hearing shall be recorded by either a court reporter or on audio or video tape or by other electronic recording medium. In addition, all items offered into evidence by the parties, whether admitted into evidence or not, shall be marked and preserved as part of the hearing record.

Upon request, the Complainant and Respondent may participate in the hearing via on-campus video conferencing provided that all parties, including the Decision Maker(s), are able to see and hear the party or witness answering questions in real-time.

The Hearing Decision Maker(s), Complainant, Respondent, and their respective advisors will attend the hearing. The Title IX investigator, Title IX Coordinator, and witnesses will be called to provide testimony if requested by the Hearing Decision Maker(s), parties or their respective advisors.

If a party does not have an advisor present at the live hearing, the College shall provide without fee or charge to that party, an advisor of the College's choice, who may be, but is not required to be an attorney. Neither party may dismiss a College appointed advisor.

The hearing process will consist of:

- x Opening statement by Hearing Decision Maker (or Primary Decision Maker)
- x Review of hearing procedures, formal complaint and notice of allegations by Hearing Decision Maker (or Primary Decision Maker)
- x Review of potential hearing outcomes and sanctions by Hearing Decision Maker (or Primary Decision Maker)
- x Complainant Testimony
- x Cross-examination of Complainant by Respondent advisor
- x Testimony of Witnesses of Complainant
- x Cross-examination of Complainant Witnesses by Respondent advisor
- x Respondent Testimony
- x Cross-examination of Respondent by Complainant advisor
- x Witnesses of Respondent Testimonies
- x Cross-examination of Respondent Witnesses by Complainant advisor
- x Decision Maker inquiries
- x Review of appeal process by Hearing Decision Maker (or Primary Decision Maker)
- x Closing statement by Hearing Decision Maker (or Primary Decision Maker)
- x Dismissal of parties

Decision Maker deliberations

At the hearing, the Hearing Decision Maker (or Primary Decision Maker) shall read the hearing procedures, notice of allegations, formal complaint, potential hearing outcomes, and potential sanctions. After the Hearing Decision Maker (or Primary Decision Maker) concludes opening statements, the Complainant shall have the opportunity to present such oral testimony and offer such other supporting evidence as deemed relevant to the formal complaint. Subsequent to Complainant testimony, the Respondent advisor may conduct cross-examination. The Decision Maker(s) may question the Complainant after the cross-examination.

The Complainant may call witnesses to provide testimony as deemed appropriate to the formal complaint. The Respondent advisor may conduct cross-examination of the witnesses. The Decision Makers may question the witnesses after the cross-examination.

The Respondent shall then be given the opportunity to present such testimony and offer such other evidence as deemed relevant to the Respondent's defense against the formal complaint. Subsequent to Respondent testimony, the Complainant advisor may conduct cross-examination. The Decision Maker(s) may question the Respondent after the cross-examination.

The Respondent may call witnesses to provide testimony as deemed appropriate to the formal complaint. The Complainant advisor may conduct cross-examination of the witnesses. The Decision Makers may question the witnesses after the cross-examination.

Only relevant cross-examination and other questions may be asked of a party or witness.

During cross-examination, the advisor will pose each question orally to the Hearing Decision Maker (or Primary Decision Maker). The Hearing Decision Maker (or Primary Decision Maker) will determine if the Complainant, Respondent, or witnesses may respond to the question. If the

Investigator, or a Decision Maker had a conflict of interest or bias that affected the outcome.

The President of Central Alabama Community College or his/her designee shall be the appeal authority in upholding, rejecting, or modifying the recommendations of the Hearing Decision Maker(s). The President or his/her designee shall not be bound in any manner by the recommendation(s) of the Hearing Decision Maker(s) but shall take it (them) into consideration in rendering his/her decision.

Either party may file a written request with the President requesting that the President or his/her designee review the decision of the Hearing Decision Maker(s). The written request must be filed within ten (10) business days following the party's receipt of the hearing report. If the appeal is not filed by the close of business on the tenth (10th) business day following the party's receipt of the report, the party's opportunity to appeal shall have been waived.

As to all appeals, the College will:

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disciplinary procedures herein to be in subsequent violation of the Code of Student Conduct during the probationary period, the student may be either suspended or expelled. Provisions of the probationary period shall be determined and expressed by the Titl

Neither the College assigned Investigator or Decision Maker(s) and any person who facilitates an informal resolution process shall require, rely upon, or otherwise use questions or evidence that constitute or seek disclosure of information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

The College's Title IX Coordinators, Investigators, Decision Maker(s) shall all have received training for their respective roles prior to participating in a Title IX Complaint or grievance process. All materials used to train the Title IX Coordinators, Investigators, Decision Makers and any person who facilitates an informal resolution process may be found on the College's website at www.cacc.edu.

