

TITLE:

TITLE IX POLICY AND PROCEDURE

INTRODUCTION

Under Title IX of the Education Amendments of 1972:

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 education program or activity receiving federal financial assistance.

This Title IX policy is based on the Department of Education’s Final Rule dated May 6, 2020. Developed to reaffirm these principles, this policy has been established to provide recourse for those individuals whose rights have been violated. It is intended to define community expectations and establish a mechanism for determining when those expectations have been violated.

Seminole State College (the “College”) uses the preponderance of the evidence, also known as “more likely than not” as a standard for proof of whether a violation occurred. In campus grievance proceedings, the burden of proof is the responsibility of the College and not the parties involved. The College never assumes a responding party is in violation of College procedure. Campus grievance proceedings are conducted to take into account the totality of all evidence available, from all relevant sources. The College may address sexual harassment affecting its students or employees that falls outside Title IX’s jurisdiction in any manner the school chooses, including providing supportive measures or pursuing discipline.

When responding to sexual harassment (e.g., by offering supportive measures to a complainant and refraining from disciplining a respondent without following a Title IX grievance process, which includes investigating formal complaints of sexual harassment), Title IX provides clear definitions so recipients, students, and employees clearly understand how a school must respond to sexual harassment incidents in a way that supports the alleged victim and treats both parties fairly. For purposes of Title IX, some definitions may vary from other similar definitions mandated by State and Federal legislation.

- **Complainant:** an individual who is alleged to be the victim of conduct that could constitute sexual harassment. This clarifies that any third party as well as the complainant may report sexual harassment. While parents and guardians do not become complainants (or respondents), Title IX expressly recognizes the legal rights of parents and guardians to act on behalf of parties (including by filing formal complaints) in Title IX matters.
- **Respondent:** an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
- **Formal complaint:** a document filed by a 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 and states:

- At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the school with which the formal complaint is filed.
- A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information required to be listed for the Title IX Coordinator under the Final Rule, and by any additional method designated by the school.
- **Document filed by a complainant:** a document or electronic submission (such as by e-mail or through an online portal provided for this purpose by the school) that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or a party during a grievance process, and must comply with requirements for Title IX personnel to be free from conflicts and bias.
- **Supportive measures:** individualized services reasonably available that are non-punitive, non-disciplinary, and not unreasonably burdensome to the other party while designed to ensure equal educational access, protect safety, or deter sexual harassment. Title IX evaluates a school's selection of supportive measures and remedies based on what is not clearly unreasonable in light of the known circumstances, and does not second guess a school's disciplinary decisions, but requires the school to offer supportive measures, and provide remedies to a complainant whenever a respondent is found responsible. The Title IX Coordinator is responsible for offering and coordinating the implementation of supportive measures. Supportive measure services that are provided to either the complainant or the respondent be kept confidential unless disclosure is necessary to provide the service. These services will be offered as appropriate, as reasonably available, and without fee or charge.
 - 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.
- **Actual Knowledge:** notice of sexual harassment or allegations of sexual harassment to a recipient's Title IX Coordinator or any official of the recipient who has the authority to institute corrective measures on behalf of the recipient, or to any employee of an elementary and secondary school.
- **Dating Violence:** dating violence is committed by a person who is or has been in a social relationship of a romantic or intimate nature with another person. The existence of such a relationship shall be determined based on consideration of the following factors:
 - The length of relationship;
 - The type of relationship;
 - The frequency of interaction between the persons involved in the relationship.
- **Domestic Violence:** domestic violence is felony or misdemeanor crime of violence committed by a:
 - current or former spouse or intimate partner of the victim;
 - person with whom the victim shares a child in common;

- person who is cohabitating with or has cohabited with the victim as a spouse or intimate partner;
 - person similarly situated to a spouse of the victim under the domestic or family violence laws of Oklahoma;
 - 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 Oklahoma.
- **Sexual Assault:** any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.
 - **Rape:** 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;
 - **Sodomy:** Oral or anal intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent disability;
 - **Sexual assault with an object:** To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity;
 - **Fondling:** the touching of the private body 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 of his/her temporary or permanent mental incapacity;
 - **Incest:** sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law;
 - **Statutory rape:** sexual intercourse with a person who is under the statutory age of consent.
- **Sexual Harassment:** conduct on the basis of sex that satisfies one or more of the following:
 - An employee of the College conditioning the provision of any aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct (quid pro quo);
 - 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 University's education program or activity;
 - Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct that explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment;
- **Stalking:** stalking refers to one who engages in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others or suffer substantial emotional distress.
 - Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

- Reasonable person means a person under similar circumstances and with similar identities to the victim.
- Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

INSTITUTIONAL RESPONSE EXPECTATIONS

Upon receiving a formal complaint, the College will respond in a way that is not deliberately indifferent when the College has actual knowledge. The College has actual knowledge if the Title IX Coordinator or any official who has authority to institute corrective measures on behalf of the recipient is informed. Regulations allow any person to report, but only Complainant, or Title IX Coordinator in limited cases, can initiate Formal Complaint

GRIEVANCE PROCESS

The College will provide a consistent, transparent grievance process for resolving formal complaints of sexual harassment. The College grievance process will:

- Treat complainants equitably by providing remedies any time a respondent is found responsible, and treat respondents equitably by not imposing disciplinary sanctions without following the grievance process.
- Provide remedies, which are required to be provided to a complainant when a respondent is found responsible, must be designed to maintain the complainant's equal access to education and may include the same individualized services as supportive measures; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent.
- Require objective evaluation of all relevant evidence, inculpatory and exculpatory, and avoid credibility determinations based on a person's status as a complainant, respondent, or witness.
- Require Title IX personnel (Title IX Coordinators, investigators, decision-makers, people who facilitate any informal resolution process) to be free from conflicts of interest or bias for or against complainants or respondents.
- Training of Title IX personnel includes training on the definition of sexual harassment, the scope of the school's education program or activity, how to conduct an investigation, and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.
- Will ensure that decision-makers receive training on any technology to be used at a live hearing.
- Will ensure that decision-makers receive training on issues of relevance, including how to apply the rape shield protections provided only for complainants.
- Include a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
- Will ensure materials used to train Title IX personnel will be posted on the College website.

- Will ensure training materials will not rely on sex stereotypes.
- Will ensure training materials promote impartial investigations and adjudications of formal complaints of sexual harassment.
- Will ensure training materials will be maintained by the school for at least seven years.
- Include reasonably prompt time frames for conclusion of the grievance process, including appeals and informal resolutions, with allowance for short-term, good cause delays or extensions of the time frames.
- Describe the range, or list, the possible remedies the College may provide a complainant and disciplinary sanctions that may be imposed on a respondent, following determinations of responsibility.
- Will use the preponderance of the evidence standard for all formal complaints of sexual harassment (including where staff and faculty are respondents).
- Will not use, rely on, or seek disclosure of information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.
- Will apply equally to both parties any provisions, rules, or practices other than those required by Title IX that the College adopts as part of its grievance process for handling formal complaints of sexual harassment. The College will evaluate the applicability of disability laws to the removal decision and consider the appropriateness of supportive measures in lieu of an emergency removal. The respondent will be provided with notice and an immediate opportunity to challenge the emergency removal.

EMERGENCY REMOVAL

In certain instances, an emergency removal action may be appropriate for the College to avoid a deliberately indifferent response. The College will conduct a prompt, individualized safety and risk analysis which must confirm there is an immediate threat to the physical health or safety of one or more individuals, who may be the respondent, the complainant, or any other individual such as a third-party witness.

INVESTIGATION

The College will investigate the allegations in any formal complaint and send written notice to both parties (complainants and respondents) of the allegations upon receipt of a formal complaint.

During the grievance process and when investigating:

- The burden of gathering evidence and burden of proof will be the responsibility of the College, not on the parties.
- The College will provide equal opportunity for the parties to present fact and expert witnesses and other inculpatory and exculpatory evidence.
- The College will not restrict the ability of the parties to discuss the allegations or gather evidence (e.g., no “gag orders”).
- Parties will have the same opportunity to select an advisor of the party’s choice who may be, but need not be, an attorney.

- The College will send written notice of any investigative interviews, meetings, or hearings.
- The College will send the parties, and their advisors, evidence directly related to the allegations, in electronic format or hard copy, with at least 10 days for the parties to inspect, review, and respond to the evidence.
- The College will send the parties, and their advisors, an investigative report that fairly summarizes relevant evidence, in electronic format or hard copy, with at least 10 days for the parties to respond.
- The College will dismiss allegations of conduct that do not meet the Title IX definition of sexual harassment or did not occur in a school's education program or activity against a person in the U.S. Such dismissal is only for Title IX purposes and does not preclude the school from addressing the conduct in any manner the school deems appropriate.
- The College will, in their discretion, dismiss a formal complaint or allegations therein if the complainant informs the Title IX Coordinator in writing that the complainant desires to withdraw the formal complaint or allegations therein, if the respondent is no longer enrolled or employed by the school, or if specific circumstances prevent the school from gathering sufficient evidence to reach a determination.
- The College will give the parties written notice of a dismissal (mandatory or discretionary) and the reasons for the dismissal.
- The College may, in their discretion, consolidate formal complaints where the allegations arise out of the same facts. Title IX protects the privacy of a party's medical, psychological, and similar treatment records by stating that schools cannot access or use such records unless the College obtains the party's voluntary, written consent to do so.

LIVE HEARING

The College will adhere to the Title IX requirement to provide a "live" hearing with cross-examination.

- At the live hearing, the decision-maker(s) must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.
- Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally.
- At the request of either party, the recipient must provide for the entire live hearing (including cross-examination) to occur with the parties located in separate rooms with technology enabling the parties to see and hear each other.
- Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker(s) must first determine whether the question is relevant and explain to the party's advisor asking cross-examination questions any decision to exclude a question as not relevant.
- If a party does not have an advisor present at the live hearing, the College will provide, without fee or charge to that party, an advisor of the school's choice who may be, but is not required to be, an attorney to conduct cross-examination on behalf of that party. Advisors must be either professionals (e.g., attorneys or experienced advocates) or at least adults capable of understanding the purpose and scope of cross-examination.

- If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.
- Live hearings may be conducted with all parties physically present in the same geographic location or, at the College's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually.
- The College will create an audio or audiovisual recording, or transcript, of any live hearing.
- Title IX provides rape shield protections for complainants, deeming irrelevant, questions and evidence about a complainant's prior sexual behavior unless offered to prove that someone other than the respondent committed the alleged misconduct or offered to prove consent.
- If more than one decision-maker is utilized in a hearing, a majority decision of the three-person panel will stand as the final decision.

STANDARD OF EVIDENCE AND WRITTEN DETERMINATION

The College will utilize a preponderance of the evidence standard of evidence, also known as "more likely than not", for all formal complaints of sexual harassment whether the respondent is a student or an employee (including faculty member).

- The decision-maker (who cannot be the same person as the Title IX Coordinator or the investigator) must issue a written determination regarding responsibility with findings of fact, conclusions about whether the alleged conduct occurred, rationale for the result as to each allegation, any disciplinary sanctions imposed on the respondent, and whether remedies will be provided to the complainant.
- The written determination will be sent simultaneously to the parties along with information about how to file an appeal.

Range of Sanctions

Sanctions for violation of college regulations may include any one or a combination of the following:

1. Formal or informal warning and reprimands.
2. The imposing of specified restrictions.
3. Financial restitution to the appropriate party.
4. Fines
5. Loss of privileges, such as use of college facilities, visitation, and attendance at college functions, etc.
6. Conduct probation. When a student is placed on conduct probation, the student, the student's parents (if applicable), and the college President are notified. A second violation means that disciplinary action taken will be based on both violations. A student who is placed on indefinite conduct probation may petition the Vice President for Student Affairs to be removed from probation status not sooner than one calendar year from the date probation took effect. A record of conduct probation is kept in the

student's file in the Admissions Office.

As a provision of conduct probation, the student may receive one or a combination of the following sanctions. They include:

- Participation in public performances, publications, events or activities sponsored by student campus organizations (except assignments required for coursework)
 - Attending or sponsoring college social functions
 - Holding an office in any student organization
 - Participation in athletics
 - Using a college vehicle
7. **Suspension.** A student may be suspended for a definite or indefinite period. Readmission to the college can be granted only by Vice President for Student Affairs. Suspension may be recorded on the student's transcript at the discretion of the Vice President for Student Affairs.
8. **Expulsion.** When a student is expelled, a record of this action is included in the student's permanent record in the Office of the Registrar. A student who is expelled will not be allowed to re-enter Seminole State College unless by permission of the President.

APPEALS

The College will offer both parties an appeal from a determination regarding responsibility, and from a school's dismissal of a formal complaint or any allegations therein, on the following bases: procedural irregularity that affected the outcome of the matter, newly discovered evidence that could affect the outcome of the matter, and/or Title IX personnel had a conflict of interest or bias, that affected the outcome of the matter. Appeals will not consist of meeting with the Complainant or Respondent, but solely a determination as to whether the request meets the grounds and is timely filed.

INFORMAL RESOLUTION

The College, at its discretion, may choose to offer and facilitate informal resolution options, such as mediation or restorative justice, so long as both parties give voluntary, informed, written consent to attempt informal resolution. Any person who facilitates an informal resolution must be well trained.

- The College will not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to a formal investigation and adjudication of formal complaints of sexual harassment. Similarly, the College will not require the parties to participate in an informal resolution process and may not offer an informal resolution process unless a formal complaint is filed.
- At any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint.
- The College will not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

RETALIATION

The College adamantly prohibits retaliation of any kind. Charging an individual with code of conduct violations that do not involve sexual harassment, but arise out of the same facts or circumstances as a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX constitutes retaliation. The College will keep confidential the identity of complainants, respondents, and witnesses, except as may be permitted by FERPA, as required by law, or as necessary to carry out a Title IX proceeding. Complaints alleging retaliation may be filed according to a school's prompt and equitable grievance procedures. The exercise of rights protected under the First Amendment does not constitute retaliation. Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a Title IX grievance proceeding does not constitute retaliation; however, a determination regarding responsibility, alone, is not sufficient to conclude that any party made a bad faith materially false statement.

TITLE IX COORDINATOR

The College Title IX Coordinator oversees compliance with all aspects of the sex/gender harassment, discrimination and misconduct procedure. The Coordinator reports to the Vice President for Student Affairs. Questions about this policy and procedure should be directed to the Title IX Coordinator or Vice President for Student Affairs. Anyone wishing to make a report relating to discrimination or harassment may do so by reporting the concern to the College Title IX Coordinator:

Leslie Sewell, Title IX Coordinator
Assistant Athletic Director
Seminole State College
2701 Boren Blvd; Raymond Harbor Fieldhouse #3
Seminole, OK 74818
(405) 382-9541
Email: l.sewell@sscok.edu

The College Deputy Title IX Coordinator oversees compliance with all aspects of the sex/gender harassment, discrimination and misconduct procedure concerning employees. Anyone wishing to make a report relating to discrimination or harassment may do so by reporting the concern to the College Deputy Title IX Coordinator:

Jeanie Nix, Deputy Title IX Coordinator
Sponsored Programs Compliance Officer
Seminole State College
2701 Boren Blvd; Dan and Andrea Boren Bldg.
Seminole, OK 74818
(405) 382-9290

Email: j.nix@sscok.edu

Should any portion of the Title IX Final Rule, 85 Fed. Reg. 30026 (May 19, 2020), be stayed or held invalid by a court of law, or should the Title IX Final Rule be withdrawn or modified to not require the elements of this policy, this policy, or the invalidated elements of this policy, will be deemed revoked as of the publication date of the opinion or order and for all reports after that date, as well as any elements of the process that occur after that date if a case is not complete by that date of opinion or order publication. Should the Title IX Grievance Policy be revoked in this manner, any conduct covered under the Title IX Grievance Policy shall be investigated and adjudicated under the existing Code of Conduct or Employee Handbook.

DATE OF ADOPTION:08/20/2020

LEGAL REFERENCE: Public Law 92 318, 86 Stat.
235 (June 23, 1972)

REVISION DATE (S):

RELATED ADMINISTRATIVE RULES AND REGULATIONS: _____

