

Spartanburg Methodist College Sexual Harassment Policy

Reference Documents:

Section 520 & Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 et seq., Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 85 Fed. Reg. 30,026.

Introduction

It shall be the policy of Spartanburg Methodist College (SMC) to comply with all aspects of Title IX of the Education Amendments of 1972 and the associated regulations. This policy shall not govern compliance with any other anti-discrimination or anti-harassment statute, rule, or regulation.

SMC is committed to providing an inclusive and welcoming environment for all members of the College community. The College will take steps to eliminate sexual or gender-based misconduct, prevent its recurrence, and eliminate the effects of such misconduct. The College strictly prohibits sexual harassment, which includes sex or gender discrimination (including sexual orientation, gender identity, or pregnancy), sexual harassment, gender-based harassment, sexual violence, sexual exploitation, sexual assault, domestic violence, dating violence, and stalking.

SMC strictly prohibits retaliation by its students or employees against a person who exercises their rights or responsibilities under any provision of federal law or state law including Title IX, Title VII, the Violence Against Women Act (VAWA), or any applicable SMC policy.

SMC utilizes procedures that provide for the prompt, fair, and impartial investigation and resolution of cases involving sexual harassment. Students or employees who violate this policy are subject to disciplinary action, up to and including suspension, dismissal, or termination from SMC. Third parties who commit sexual harassment may have their relationships with SMC terminated and/or their privileges of being on SMC's campus withdrawn.

On May 19, 2020, the U.S. Department of Education issued a Final Rule under Title IX of the Education Amendments of 1972 that:

- Defines the meaning of “sexual harassment” (including forms of sex-based violence)
- Addresses how SMC **MUST** respond to reports of misconduct falling within that definition of sexual harassment, and
- Mandates a grievance process that this institution **MUST** follow to comply with the law in these specific covered cases before issuing a disciplinary sanction against a person accused of sexual harassment.

See, 85 Fed Reg. 30026 (May 19, 2020). The full text of the Final Rule and its extensive Preamble are available here: [Title IX Final Rule May 2020](#).

Based on the Final Rule, SMC implemented the following Title IX Grievance Policy, effective August 14, 2020.

Title IX Grievance Policy and Other Campus Disciplinary Policies

In recent years, “Title IX” cases have become a short-hand for any campus disciplinary process involving sex discrimination, including those arising from sexual harassment and sexual assault. Under the Final Rule, SMC must narrow both the geographic scope of its authority to act under Title IX and the types of “sexual harassment” that it must subject to its Title IX investigation and adjudication process. **Only** incidents falling within the Final Rule’s definition of sexual harassment will be investigated and, if appropriate, brought to a live hearing through the Title IX Grievance Policy defined below.

SMC remains committed to addressing any violations of its policies, even those not meeting the narrow standards defined under the Title IX Final Rule.

Specifically, our campus has:

A SMC Code of Conduct that defines certain behavior as a violation of campus policy for students:

Sexual Harassment includes employee quid pro quo and unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to education programs or activity. This also includes Sexual Assault, Domestic Violence, Dating Violence, and Stalking.

Students who are found responsible for violating the sexual harassment policy may face disciplinary action based on the severity of the offense including the following:

- Educational Assignment
- Restitution
- Disciplinary Probation
- Interim Suspension
- Suspension
- Removal/Suspension from Campus Housing
- Expulsion

College employees who are found responsible for violating the sexual misconduct policy may face disciplinary action deemed appropriate by the College based on the severity of the offense including the following:

- Verbal Warning
- Written Warning(s)
- Required Counseling
- Suspension and/or Termination
- Removal from campus and/or no trespass orders
- Other punishment deemed necessary considering the behaviors

Visitors and other third parties will be subject to corrective action deemed appropriate by the College based on the severity of the offense and may include:

- Verbal Warning
- Written Warning(s)
- Removal from Campus
- No Trespass Orders
- Termination of Contractual or other arrangements

To the extent that the alleged misconduct falls outside the Title IX Grievance Policy, or misconduct falling outside the Title IX Grievance Policy is discovered in the course of investigating covered Title IX misconduct, SMC retains authority to investigate and adjudicate the allegations under the policies and procedures defined within the SMC Code of Conduct.

The elements established in the Title IX Grievance Policy under the Final Rule have no effect and are not transferable to any other policy of the College for any violation of the Code of Conduct, employment policies, or any civil rights violation except as narrowly defined in this Policy. This Policy does not set a precedent for other policies or processes of the College and may not be cited for or against any right or aspect of any other policy or process.

Effective Date

The Title IX Grievance Policy became effective, August 14, 2020, and will only apply to sexual harassment alleged to have occurred on or after August 14, 2020. Incidents of sexual harassment alleged to have occurred prior to August 14, 2020, will be investigated and adjudicated according to the process in place at the time the incident allegedly occurred.

Revocation by Operation of Law

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 SMC Code of Conduct.

Notice of Non-Discrimination in Application

The requirements and protections of this policy apply equally regardless of sex, sexual orientation, gender identity, gender expression, or other protected classes covered by federal or state law. All requirements and protections are equitably provided to individuals regardless of such status or status as a Complainant, Respondent, or Witness. Individuals who wish to file a complaint about the institution's policy or process may be referred to:

Keith James
Director, Title IX & Equal Opportunity
1000 Powell Mill Rd.
Spartanburg, SC 29301
864-587-4129
Smctix@smcsc.edu

Complaints or inquiries regarding harassment or discrimination may also be made to:

U.S. Equal Employment Opportunity Commission
330 South Second Avenue
Suite 720
Minneapolis, MN 55401-2224
1-800-669-4000
Fax: 612-335-4044
TTY: 1-800-669-6820
Web: www.eeoc.gov

Office for Civil Rights
U.S. Department of Education
Lyndon Baines Johnson Department of Education Building
400 Maryland Ave, SW
Washington, DC 20202-1100
Phone: 800-421-3481
Fax: 202-453-6012
Email: OCR@ed.gov

Notice of Non-Discrimination Policy as to Students

SMC admits students of any race, color, national, and ethnic origin to all the rights, privileges, programs, and activities generally accorded or made available to students at the school. It does not discriminate on the basis of race, color, national, and ethnic origin in administration of its educational policies, scholarship and loan programs, and athletic and other school-administered programs.

Notice of Non-Discrimination in Employment

SMC does not discriminate on the basis of race, color, creed, religion, sex, age, national, or ethnic origin, disability, veteran status, sexual orientation, or any legally protected status in any personnel action regarding the recruiting, hiring, and promotion of faculty and staff members.

Definitions

For the purposes of this Policy, the listed terms shall have the following definitions:

- a. *Actual Knowledge.* Notice of sexual harassment or allegations of sexual harassment to an institution's Title IX Coordinator or any institution official.
- b. *Bystander Intervention.* A philosophy and approach for prevention of various types of violence, which include bullying, sexual harassment, sexual assault, dating violence, etc.
- c. *Complainant.* An individual who is alleged to be the victim of conduct that could, after investigation, constitute sexual harassment.
- d. *Confidential Employee.* (1) Any employee who is a licensed medical, clinical, mental health professional, or ordained clergy when acting in that professional role; and (2) any employee providing administrative, operation, and/or relational support for such health care providers in the performances of their services. A confidential employee will not disclose information about sexual harassment to the Title IX Coordinator, or others, in a way that identifies the individual(s) involved without their permission (subject to the exception set forth in the Privacy and Confidentiality section of this policy).
- e. *Consent.* For purposes of this policy, consent is defined as affirmative, informed, voluntary, and active permission to engage in a mutually agreed upon sexual act or sexual contact. Consent is expressed by clear and unambiguous words or actions that a reasonable person not under the influence of alcohol and/or drugs would believe communicates a willingness to participate in a sexual act or contact. It is the responsibility of each person who wishes to engage in sexual acts or contacts to obtain consent. Silence, the lack of protest, or the absence of resistance does not indicate consent. Consent may also be initially given but withdrawn at any time. Consent to a past sexual act or contact does not imply consent to a future sexual act or contact. Consent to one form of a sexual act or contact does not imply consent to other forms of sexual acts or contacts. Being impaired, such as by drugs or alcohol, does not eliminate a person's responsibility to obtain consent.

Consent cannot be obtained:

- Using physical force, threats, intimidation, deception, or coercion.
- From one who is incapacitated, such as due to mental or physical condition or the use of alcohol or drugs.
- From one who is asleep or unconscious.

- From one who is not old enough to give consent under South Carolina law.
- f. *Dating Violence.* Violence committed by the respondent:
 - i. Who is or has been in a romantic or intimate relationship with the complainant; and
 - ii. Where the existence of such a relationship shall be determined by considering the length of the relationship, the type of relationship, and the frequency of interactions between the complainant and respondent.
 - g. *Discrimination.* Unfair or unequal treatment of an individual or group based upon certain characteristics. Protected classification under this policy include sex, sexual orientation, gender identity, marital status, and pregnancy. Discrimination is a violation of this policy when it establishes a quid pro quo, creates a hostile environment, or is done for a prohibited purpose.
 - h. *Domestic Violence.* Violence committed by the respondent, who is:
 - i. A current or former spouse or intimate partner of the complainant.
 - ii. A person with whom the complainant shares a child in common.
 - iii. Cohabiting with or has cohabited with the victim as a spouse or intimate partner.
 - iv. Similarly situated to a spouse of the complainant under South Carolina’s domestic or family violence laws 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 South Carolina.
 - i. *Education Program or Activity.* Includes locations, events, or circumstances over which an institution exercises substantial control over both the respondent and the context in which the sexual harassment occurs, as well as in any building owned or controlled by a student organization that is officially recognized by the institution.
 - j. *Employee.* Any person employed for wages or salary by SMC, in either full-time or part-time capacity, in any location or job. Examples include officers, faculty, staff, graduate assistants, and student employees. Employees include temporary, probationary, and regular employees.
 - k. *Fondling.* The touching or 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 age or temporary or permanent mental incapacity.
 - l. *Formal Complaint.* A document filed by a complainant (which either contains the complainant’s signature or indicates that the complainant is the one filing the complaint) or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the institution investigate.
 - m. *Gender Based Harassment.* Gender based harassment is a form of discrimination based on gender and includes acts of verbal, nonverbal, or physical aggressions, intimidation or hostility based on actual or perceived gender, sexual orientation, or gender identity, even if the acts do not involve conduct of a sexual nature. Gender based harassment also includes quid pro quo and hostile environment harassment.
 - n. *Gender Based Misconduct.* Gender based misconduct is the broad term used to describe all prohibited discriminatory actions related to a victim’s gender outlined in this policy.

- o. *Gender Identity.* A person's internal sense of being male, female, or some combination of male and female, or neither male nor female. A person's gender identity may be different than their biological sex.
- p. *Incapacitation.* Incapacitation means a person lacks the ability to make informed, rational judgments, about whether or not to engage in a sexual act or contact.
- q. *Preponderance of the Evidence.* Preponderance of the evidence is the evidentiary standard used in SMC's disciplinary procedures and investigation processes (including this policy). The facts must show that the responding party violated SMC policy by a preponderance of the evidence (i.e., it is more likely than not the respondent's actions violate SMC policy) before disciplinary sanctions will be applied. The respondent is presumed to be not responsible until and unless there is a determination of responsibility at the conclusion of the grievance process.
- r. *Privacy.* SMC will strive to keep the parties' information private. Information will only be shared with individuals who need to know to adequately respond to the reported incident.
- s. *Rape.* Penetration, no matter how slight, of the vagina or anus of the complainant with any body part or object by the respondent, or oral penetration of the complainant by a sex organ of the respondent, without the consent of the complainant.
- t. *Respondent.* An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
- u. *Responsible Employee.* SMC responsible employees include any employee who has the authority to take action to address the misconduct; has the duty to report misconduct; or is someone a student would reasonably believe has authority or a responsibility to report sexual harassment. Examples of responsible employees include: presidents, vice-presidents, deans, directors, department heads, supervisors, professors, full-time faculty, part-time faculty, adjunct faculty, coaches, graduate assistants, community assistants, and resident directors. A responsible employee who has knowledge of sexual harassment but does not report it to the Title IX Coordinator is subject to discipline.
- v. *Retaliation.* Neither SMC nor any person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX 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. 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 set of facts or circumstances as a report or complaint of sex discrimination, or a report of formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX constitutes retaliation. 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 grievance process does not constitute retaliation, although a determination regarding responsibility, alone, is not sufficient to conclude any party made a materially false statement in bad faith. Complaints alleging retaliation may be filed pursuant to the grievance procedures for sex discrimination under Title IX. Retaliatory conduct is prohibited and will be cause for disciplinary action, up to an including suspension, expulsion, and/or termination. Retaliation occurs when an adverse action is taken against an individual for engaging in a protected activity (without a non-retaliatory reason). Protect activity includes but is not limited to:

- i. Opposing conduct reasonably believed to constitute discrimination, including harassment that violates an employment discrimination statute or that SMC policy prohibits.
 - ii. Filing a complaint about such practice.
 - iii. Seeking an accommodation under this policy.
 - iv. Testifying, assisting, or participating in any manner in an investigation or other proceeding related to a discrimination or other complaint.
- w. *Sex*. A person's biological status, based on biological traits such as genitalia, sex chromosomes, and internal reproductive organs.
- x. *Sexual Assault*. Either rape, fondling, incest, statutory rape, or any of the sexual offenses listed under South Carolina Criminal Code Sections 16-3 and 16-15 or by the FBI's Uniform Crime Reporting System.
- y. *Sexual Contact*. Any intentional sexual touching, whether or not through clothing or other covering, of another person's sexual or intimate body parts with an object or body part. Sexual contact also includes making another person touch themselves or another person in this manner; touching another person with one's sexual or intimate body parts; or the emission of bodily fluids on any person for sexual or aggressive desires.
- z. *Sexual Harassment*. Conduct on the basis of sex, constituting one (or more) of the following:
 - i. An employee of the institution conditioning the provision of an aid, benefit, or service of the institution on an individual's participation in unwelcome sexual conduct.
 - ii. 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 institution's education program or activity,
 - iii. Sexual assault, dating violence, domestic violence, or stalking as defined in this section.
- aa. *Sexual Misconduct*. Sexual misconduct is the broad term used to describe all prohibited conduct of a sexual nature outlined in this policy.
- bb. *Sexual Orientation*. The sex or gender of those to whom one is attracted.
- cc. *Stalking*. 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.
- dd. *Statutory Rape*. Sexual intercourse with a person who is under the statutory age of consent.
- ee. *Student*. All persons taking courses at and/or receiving instruction through SMC, whether credit hours are earned, full-time or part-time, pursuing undergraduate, non-degree, or professional studies.
- ff. *Supportive Measures*. Non-disciplinary, non-punitive individualized services offered as appropriate (as reasonably available) and without fee or charge to the complainant and/or respondent.
- gg. *Title IX*. Title IX is a federal civil rights law passed as part of the Education Amendments of 1972. This law protects people from discrimination based on sex in education programs or activities that receive Federal financial assistance. Title IX states that, "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or

subjected to discrimination under any education program or activity receiving Federal financial assistance.

Covered Sexual Harassment

For the purposes of this Title IX Grievance Policy, “covered sexual harassment” includes any conduct on the basis of sex that satisfies one or more of the following:

1. An employee conditioning educational benefits on participation in unwelcome sexual conduct (i.e., *quid pro quo*).
2. Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the educational institution’s education program or activity.
3. Sexual Assault- (as defined in the Clery Act and in the above section), which includes any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent.
4. Dating Violence- (as defined above and in the Violence Against Women Act [VAWA] Amendments to the Clery Act).
5. Domestic Violence- (as defined above and in the Violence Against Women Act [VAWA] Amendments to the Clery Act).
6. Stalking- (as defined above and in the Violence Against Women Act [VAWA] Amendments to the Clery Act).

Note: Conduct that does not meet one or more of these criteria may still be prohibited under the SMC Student Code of Conduct.

Violence Against Women Act (VAWA)

The Violence Against Women Act (VAWA) requires institutions of higher education to comply with certain campus safety and security-related requirements as a condition of participating in Title IV programs.

VAWA requires institutions to compile and report statistics about incidents of dating violence, domestic violence, sexual assault, and stalking.

As it relates to VAWA, the listed terms shall have the following definitions:

- a. *Dating Violence*-violence committed by the respondent:
 - a. Who is or has been in a romantic or intimate relationship with the complainant and;
 - b. Where the existence of such a relationship shall be determined by considering the length of the relationship, the type of relationship, and the frequency of interactions between the complainant and respondent.
- b. *Domestic Violence*-Violence committed by the respondent, who is:
 - a. A current or former spouse or intimate partner of the complainant;
 - b. A person with whom the complainant shares a child in common;
 - c. Cohabiting with or has cohabited with the victim as a spouse or intimate partner;
 - d. Similarly situated to a spouse of the complainant; or
 - e. Any person against whose acts the complainant is protected under South Carolina domestic and family violence laws or by any other person against adult or youth victim

who is protected from that person's acts under the domestic or family violence laws of South Carolina.

- c. *Sexual Assault*-either rape, fondling, incest, statutory rape, or any of the sexual offenses covered under South Carolina Criminal Law section 16-3 or by the FBI's Uniform Crime Reporting system.
- d. *Stalking*-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.

For more information on SMC's response to VAWA related offenses, please refer to [SMC's Annual Crime and Fire Safety Report](#).

Consent

For the purposes of this Title IX Grievance Policy, "consent" means affirmative, conscious, and voluntary agreement to engage in sexual activity. Past consent does not imply future consent. Silence or absence of resistance does not imply consent. Consent must be clearly demonstrated through mutually understandable words and/or actions. Consent can be withdrawn at any time. Consent to one form of sexual activity cannot be assumed to be consent to any other form of sexual activity. Relying on non-verbal communications can lead to misunderstandings. Past consent to a particular activity does not constitute consent to similar acts in the future. Whether consent has been given will be determined contemporaneously with the activities in question.

Consent cannot be given by someone who is:

- Very young or very old
- Mentally or physically incapacitated
- Under the influence of alcohol or drugs
- Asleep
- Unconscious

Jurisdiction and Scope

The Sexual Harassment Policy applies to members of the SMC community including students, faculty, staff, and administrators. The Policy covers all University programs and activities in the United States.

Education Program or Activity

For the purposes of this Title IX Grievance Policy, SMC's "Education Program or Activity" includes:

- Any on-campus premises
- Any off-campus premises that SMC has substantial control over. This includes building or property owned or controlled by a recognized student organization.
- Activity occurring within computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of SMC's programs and activities over which SMC has substantial control.

Formal Complaint

For the purposes of the Title IX Grievance Policy, a “formal complaint” is a document including an electronic submission filed by a complainant with a signature or other indication that the complainant is the person filing the formal complaint, or signed by the Title IX Coordinator, alleging sexual harassment against a respondent about conduct within SMC’s education program or activity and requesting initiation of the procedures consistent with the Title IX Grievance Policy to investigate the allegation of sexual harassment.

Complainant

For the purposes of the Title IX Grievance Policy, a complainant is any individual who has reported being or is alleged to be the victim of conduct that could constitute covered sexual harassment as defined under this policy.

Respondent

For purposes of this Title IX Grievance Policy, respondent means any individual who has been reported to be the perpetrator of conduct that could constitute covered sexual harassment as defined under this policy.

Relevant Evidence and Questions

“Relevant” evidence and questions refer to any questions and evidence that tends to make an allegation of sexual harassment more or less likely to be true.

“Relevant” evidence and questions do not include the following types of evidence and questions, which are deemed “irrelevant” at all stages of the Title IX Grievance Process:

- Evidence and questions about the complainant’s sexual predisposition or prior sexual behavior unless:
 - They are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or
 - They concern specific incidents of the complainant’s prior sexual behavior with respect to the respondent and are offered to prove consent. 34 CFR § 106.45(6)(i).
- Evidence and questions that constitute, or seek disclosure of, information protected under a legally recognized privilege.
- Any party’s medical, psychological, and similar records unless the party has given voluntary, written consent. 85 Fed. Reg. 30026, 30294 (May 19, 2020).

Privacy vs. Confidentiality

Consistent with Standards of Conduct references made to *confidentiality* refer to the ability of identified confidential resources to not report crimes and violations to law enforcement or college officials without permission, except for extreme circumstances, such as a health and/or safety emergency or child abuse. References made to *privacy* mean SMC offices and employees who cannot guarantee confidentiality but will maintain privacy to the greatest extent possible, and information disclosed will be relayed only as necessary to investigate and/or seek a resolution and to notify the Title IX Coordinator, or designee, who is responsible for tracking patterns and spotting systemic issues. SMC will limit the disclosure as much as

practicable, even if the Title IX Coordinator determines that the request for confidentiality cannot be honored.

SMC is committed to protecting the privacy of all individuals involved in an incident reported under the Sexual Harassment Policy. Every effort will be made to respect and safeguard the privacy interests of the individuals involved in a manner consistent with the need for a careful assessment of the allegations and any necessary steps to eliminate the misconduct, prevent its recurrence, and address its effects.

Privacy generally means that information related to a reported incident will only be shared with a limited number of individuals that “need to know” the information to assist the review, investigation and/or resolution of the incident. While not bound by confidentiality, these individuals will be discrete and respect the privacy of all individuals involved in the process. If a decision is made to pursue disciplinary action against a responding party, information related to the report will be shared with them. When the parties involved are students, information regarding a reported incident will not be shared with either party’s parents or guardians unless the party has signed a waiver that complies with FERPA or there is an articulable threat to the health or safety of the party or other individuals. SMC will share the final results of an investigation and the applicable sanctions with the complainant when the incident involved violent crime or sexual misconduct. The information that will be shared includes:

- i. The name of the accused student.
- ii. Any SMC policy that was broken and key findings that support the conclusion.
- iii. A description of the disciplinary action taken.

While a responsible employee cannot offer confidentiality to an individual who discloses an incident of prohibited conduct, the responsible employee will maintain the privacy of all individuals involved by sharing the information related to the report with only those who need to know as outlined above. Confidentiality means that information shared with a designated campus or community professional will only be disclosed with the party’s expressed written permission unless there is an imminent threat of harm to self or others. An individual can seek confidential assistance and support by speaking with specifically designated confidential employees and using confidential resources identified in this policy.

Confidential and Responsible Employees

As set forth in the “definitions”, for purposes of reporting obligations under this policy, all SMC employees are designated as either “confidential employees” or “responsible employees”.

Responsible employees who fail to report incidents of sexual harassment when they knew or reasonably should have known about an incident of sexual harassment involving a SMC employee or student may be subject to discipline. SMC is required to investigate an allegation of sexual harassment when it has actual knowledge, as defined above.

Reports of sexual harassment can be made:

1. Online by submitting the form on the SMC Title IX webpage
2. Reporting in person to the Title IX Coordinator
3. Speaking with a responsible employee who will notify the Title IX Coordinator

Once the Title IX Coordinator has been notified, they will contact the Complainant to see if they wish to file a formal complaint, or the Coordinator may file a formal complaint on behalf of the College. Reports can be made any time after an incident involving sexual harassment occurs; however, the College encourages reports be made as soon as possible following an incident to ensure the most effective investigation possible. The College also strongly encourages reporting parties to report sexual harassment because it provides the College with the best opportunity to offer appropriate support, resources, and

supportive measures to assist a reporting party, assess any health or safety risks posed by the alleged misconduct, take immediate and appropriate steps to investigate what occurred, and take prompt and effective action to end any misconduct, remedy its effects, and prevent its recurrence.

As stated in the “definitions”, individuals who want to keep their confidentiality may speak to a confidential employee. A confidential employee will not disclose information about sexual harassment to SMC’s Title IX Coordinator, or others in a way that identifies the involved individuals without the individual’s permission (unless required by law to do so).

Responsible employees are under an obligation to share information with the Title IX Coordinator when they know or reasonably should know about:

1. A student who has experienced sexual harassment, regarding of where or when the incident occurred.
2. An employee who has experienced sexual harassment only if the accused person is a SMC employee or student.

Responsible employees are required to share all relevant information of which they are or become aware of that is related to the incident, including the names of the involved individual(s) and witnesses and the date, location, and circumstances of the incident, if known. Responsible employees who know about an incident involving sexual harassment involving a student or employee who fail to report to the Title IX Coordinator may be subject to discipline. Responsible employees should not perform an investigation or attempt to discover additional information before contacting the Title IX Coordinator.

SMC realizes that in some instances a complainant may tell a responsible employee about an incident of sexual harassment but also request:

1. That their name and any other personally identifying information be confidential and not share with the responding party or others.
2. That no investigation be pursued.
3. No disciplinary action be taken.

The responsible employee should communicate these requests to the Title IX Coordinator. SMC will honor such requests if it is possible to do so while also protecting the health and safety of the SMC community and in compliance with state and federal law. The Title IX Coordinator will consider the totality of the known circumstances; the presence of any risks to the safety of the campus community; the potential impact of such actions on the complainant; and the existence of other available and relevant information or evidence regarding the alleged conduct. If the reporting party’s request to keep confidentiality can be honored, SMC may take other steps designed to eliminate the reported conduct, prevent its recurrence, and remedy its effects on the reporting party and the University community. If it is determined that SMC cannot honor the confidentiality request, the Title IX Coordinator will advise the complainant that SMC intends to proceed with an investigation but that the complainant is not required to participate in the investigation or in any other actions undertaken by the College. If the complainant declines to participate in the investigation, the Title IX Coordinator may continue the investigation process if it is possible to do so without the complainant’s participation; however, SMC’s ability to meaningfully investigate and respond may be limited.

Disability Accommodations

This Policy does not alter any institutional obligations under federal disability laws including the Americans with Disabilities Act (ADA) of 1990, and Section 504 of the Rehabilitation Act of 1973. Parties may request reasonable accommodations for disclosed disabilities to the Title IX Coordinator at any point before or during the Title IX Grievance Process that do not fundamentally alter the process. The

Title IX Coordinator will not affirmatively provide disability accommodations that have not been specifically requested by the Parties, even where the Parties may be receiving accommodations in other institutional programs and activities.

Making A Report Regarding Covered Sexual Harassment to the Institution

Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report.

The role of the Title IX Coordinator is to ensure compliance with federal and state law and regulations regarding Title IX. The Title IX Coordinator oversees the University's investigation, response to, and resolution of all reports of sexual harassment. The Title IX Coordinator organizes the mandatory training for individuals involved in the University's sexual harassment investigation and grievance process, which includes training on the definition of sexual harassment, the scope of the education program or activity, how to conduct an investigation and grievance process, including hearings and appeals, and how to serve impartially, including by avoiding prejudgments of the facts at issue, conflicts of interest, and bias. The Title IX Coordinator also assists students and employees in understanding their rights, responsibilities, and options for reporting potential misconduct and receiving support services.

Inquiries and/or concerns relating to Title IX or sexual and gender-based misconduct may be referred to SMC's Title IX Coordinator:

Keith James
Director, Title IX & Equal Opportunity
1000 Powell Mill Rd.
Spartanburg, SC 29301
864-587-4129
Smctix@smcsc.edu

Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address listed for the Title IX Coordinator.

The following Officials will provide privacy, but not confidentiality, upon receiving a report of conduct under this policy:

- The Title IX Coordinator
- Stacey Scarborough, Deputy Title IX Coordinator
Instructional Designer, Online Programs
scarboroughS@smcsc.edu
- Deanna Unger, Deputy Title IX Coordinator
Associate AD for Athletic Compliance
Bridges Arena
864-587-4362
UngerD@smcsc.edu

Campus Confidential Resources

***Individuals may be able to report to these individuals without triggering a campus investigation. Normally, these employees will report no identifying information to SMC authorities without your permission. However, in some circumstances reporting may be required. ***

SMC Chaplain
Phone: 864-587-4282

SMC Counseling Services
Phone: 864-587-4356

SMC Health Services
Phone: 864-587-4277

Off-Campus Confidential Resources

SAFE Homes Rape Crisis Coalition
24-hour hotline: 1-800-273-5066 or 864-583-9803

National Sexual Assault Hotline (RAINN)
1-800-656-4673 (HOPE)
Live chat: www.ohl.rainn.org/online24/7

Domestic Violence Hotline
1-800-799-7233 (SAFE)

Men's Domestic Abuse Helpline
24-hour hotline: 1-888-743-5754

Reporting

A complainant may choose to make a report to SMC to pursue resolution under this policy and may also choose to make a report to law enforcement. A complainant may pursue either, or both, of these options at the same time. If the complainant files a criminal complaint with local law enforcement, SMC will comply with reasonable law enforcement requests for cooperation. Such cooperation may require SMC to temporarily suspend the Title IX investigation while law enforcement gathers evidence.

Non-Investigatory Measures Available Under the Title IX Grievance Policy

Supportive Measures

Complainants (as defined above), who report allegations that could constitute covered sexual harassment under this policy, have the right to receive supportive measures from SMC regardless of whether they desire to file a complaint, which may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, no-contact orders, changes in work or housing locations, leaves of absences, or increased security and monitoring of certain areas of campus are appropriate. Supportive measures are non-disciplinary and non-punitive.

Emergency Removal

SMC retains the authority to remove a respondent from SMC's program or activity on an emergency basis, where SMC (1) undertakes an individualized safety and health risk analysis and (2) determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of covered sexual harassment justifies a removal.

If SMC determines such a removal is necessary, the respondent will be provided notice and an opportunity to challenge the decision immediately following the removal.

Administrative Leave

SMC retains the authority to place a non-student employee respondent on administrative leave during the Title IX Grievance Process, consistent with SMC's Policies and Procedures manual.

The Title IX Grievance Process

Filing a Formal Complaint

The timeframe for the Title IX Grievance Process begins with the filing of a Formal Complaint. The Grievance Process will be concluded within a reasonably prompt manner, and no longer than ninety (90) business days after the filing of a Formal Complaint, provided that the process may be extended for a good reason, including but not limited to the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities. The procedure for applying for extensions is described below. To file a Formal Complaint, a complainant must provide the Title IX Coordinator an electronic or written signed complaint describing the facts alleged. Complainants are only able to file a Formal Complaint under this Policy if they are currently participating in, or attempting to participate in, the education programs or activities, of SMC, including as an employee. For complainants who do not meet these criteria, SMC will utilize existing policies in the SMC Code of Conduct.

If a complainant does not wish to make a Formal Complaint, the Title IX Coordinator may determine a formal complaint is necessary. SMC will inform the complainant of this decision in writing, and the complainant need not participate in the process further but will receive all notices issues under this policy and process.

Nothing in the Title IX Grievance Policy prevents a complainant from seeking the assistance of state or local law enforcement alongside the appropriate on-campus process.

Multi-Party Situations

SMC may consolidate Formal Complaints alleging covered sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of covered sexual harassment arise out of the same facts or circumstances.

Determining Jurisdiction

The Title IX Coordinator or designee without a conflict of interest or bias, will determine if the Title IX Grievance Process should apply to a Formal Complaint. The Process will apply when ALL of the following elements are met, in the reasonable determination of the Title IX Coordinator or designee:

1. The conduct is alleged to have occurred on or after August 14, 2020.
2. The conduct is alleged to have occurred in the United States.
3. The conduct is alleged to have occurred in SMC's education program or activity.
4. The alleged conduct, if true, would constitute covered sexual harassment as defined in this policy.

If all the elements are met, SMC will investigate the allegations according to the Grievance Process.

Allegations Potentially Falling Under Two Policies

If the alleged conduct, if true, includes conduct that would constitute covered sexual harassment and conduct that would not constitute covered sexual harassment, the Title IX Grievance Process will be applied in the investigation and adjudication of all the allegations.

Mandatory Dismissal

If any one of these elements are not met, the Title IX Coordinator or designee without a conflict of interest or bias will notify the parties that the Formal Complaint is being dismissed for the purposes of the Title IX Grievance Policy. Each party may appeal this dismissal using the procedure outlined in "Appeals," below.

Discretionary Dismissal

The Title IX Coordinator or designee without a conflict of interest or bias may dismiss a Formal Complaint under the Title IX Grievance Policy, or any specific allegations raised within that Formal Complaint, at any time during the investigation or hearing, if:

- A complainant notifies the Title IX Coordinator in writing that they would like to withdraw the Formal Complaint or any allegations raised in the Formal Complaint;
- The respondents is no longer enrolled or employed by SMC; or,
- Specific circumstances prevent SMC from gathering evidence sufficient to reach a determination regarding the Formal Complaint or allegations within the Formal Complaint.

Any party may appeal a dismissal determination using the process set forth in "Appeals," below.

Notice of Dismissal

Upon reaching a decision that the Formal Complaint will be dismissed, SMC will promptly send written notice of the dismissal of the Formal Complaint or any specific allegation within the Formal Complaint, and the reason for the dismissal, simultaneously to the parties through their SMC email accounts. It is the responsibility of parties to maintain and regularly check their email accounts.

Notice of Removal from Title IX to Code of Conduct

Upon dismissal for the purposes of Title IX, SMC retains discretion to utilize the SMC Code of Conduct to determine if a violation of the Code of Conduct has occurred. If so, SMC will promptly send written notice of the dismissal of the Formal Complaint under the Title IX Grievance Process and removal of the allegations to the conduct process.

Notice of Allegations

The Title IX Coordinator will draft and provide the Notice of Allegations (NOA) to any party to the allegations of sexual harassment. Such notice will occur as soon as practicable, but no more than five (5) business days after the institution receives a Formal Complaint of the allegations, if there are no extenuating circumstances.

The parties will be notified via their SMC email account if they are a student or employee, and by other reasonable means if they are neither.

SMC will provide sufficient time for the parties to review the NOA and prepare a response before any initial interview.

The Title IX Coordinator or designee may determine that the Formal Complaint must be dismissed under the mandatory grounds listed above and will issue a Notice of Dismissal. If such a determination is made, any party to the allegations of sexual harassment identified in the Formal Complaint will receive the Notice of Dismissal in conjunction with, or in separate correspondence after the NOA.

The NOA will include the following:

- Notice of SMC's Title IX Grievance Process and a hyperlink to a copy of the process.
- Notice of the allegations potentially constituting covered sexual harassment, and sufficient details known at the time the Notice is issued, such as the identities of the parties involved in the incident, if known, including the complainant, the conduct allegedly constituting covered sexual harassment, and the date and location of the alleged incident if known.
- A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
- A statement that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney, as required under 34 C.F.R. § 106.45(b)(5)(iv).
- A statement that before the conclusion of the investigation, the parties may inspect and review evidence that before the conclusion of the investigation that is directly related to the allegations raised in the Formal Complaint, including the evidence upon which SMC does not intend to rely on when reaching a determination regarding responsibility, and evidence that both tends to prove or disprove the allegations, whether obtained from a party or other source, as required by 34 C.F.R. § 106.45(b)(5)(vi).

Ongoing Notice

If, during the investigation, SMC decides to investigate allegations about the Complainant or Respondent that are not included in the NOA and are otherwise covered "sexual harassment" falling within the Title IX Grievance Process, SMC will notify the parties whose identities are known of the additional allegations by their SMC email accounts or other reasonable means.

The parties will be provided sufficient time to review the additional allegations to prepare a response before any initial interview regarding those additional charges.

Advisor of Choice and Preparation of Advisor of Choice

SMC will provide the parties equal access to advisors and support persons; any restrictions on advisor participation will be applied equally.

SMC has a long-standing practice of requiring students to participate in the process directly and not through and advocate or representative. Students participating as a Complainant or Respondent in this process may be accompanied by an Advisor of Choice to any meeting or hearing to which they are required or eligible to attend. The Advisor of Choice is not an advocate. Except where explicitly stated by this Policy, as consistent with the Final Rule, Advisors of Choice shall not participate directly in the process as per standard policy and practice of SMC.

SMC will not intentionally schedule meetings or hearings on dates where the Advisors of Choice for all parties are not available, provided that the Advisors act reasonably in providing available dates and work collegially to find dates and times that meet all schedules.

SMC's obligations to investigate and adjudicate in a prompt timeframe under Title IX and other college policies apply to matters governed under this Policy, and SMC cannot agree to extensive delays solely to accommodate the schedule of an Advisor of Choice. The determination of what is reasonable shall be made by the Title IX Coordinator or designee. SMC will not be obligated to delay a meeting or hearing under this process more than five (5) business days due to the unavailability of an Advisor of Choice and may offer the party the opportunity to obtain a different Advisor of Choice or utilize one provided by SMC.

Notice of Meetings and Interviews

SMC will provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings with a party, with sufficient time for the party to prepare to participate.

Delays

Each party may request a one-time delay in the Grievance Process of up to five (5) business days for good cause (granted or denied in the sole judgment of the Title IX Coordinator or designee) provided that the requestor provides reasonable notice, and the delay does not overly inconvenience other parties.

For example, a request to take a five-day pause made an hour before a hearing for which multiple parties and their advisors have traveled to and prepared for shall generally not be granted, while a request for a five day pause in the middle of investigation interviews to allow a party to obtain certain documentary evidence shall generally be granted.

The Title IX Coordinator or designee shall have sole judgment to grant further pauses in the Process.

Title IX Investigations

General Rules of Investigation

The Title IX Coordinator and/or an investigator designated by the Title IX Coordinator will perform an investigation under a reasonably prompt timeframe of the conduct alleged to constitute sexual harassment after issuing the NOA.

SMC and not the parties, has the burden of proof and the burden of gathering evidence, i.e., the responsibility of showing a violation of this Policy has occurred. This burden does not rest with either party, and either party may decide not to share their account of what occurred or may decide not to participate in an investigation or hearing. This does not shift the burden of proof away from SMC and does not indicate responsibility.

SMC cannot access, consider, or disclose medical records without a waiver from the party (or parent, if applicable) to whom the records belong or of whom the records include information. SMC will provide equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence, (i.e., evidence that tends to prove and disprove the allegations) as described below.

Evidence that will be available for inspection and review by the parties will be any evidence that is directly related to the allegations raised in the Formal Complaint. It will include any:

1. Evidence that is relevant, even if that evidence does not end up being relied upon by the institution in making a determination regarding responsibility.
2. Inculpatory and exculpatory evidence (i.e., evidence that tends to prove and disprove the allegations) that is directly related to the allegations, whether obtained from a party or other source.

All parties must submit any evidence they would like the investigator to consider prior to when the parties' time to inspect and review evidence begins.

SMC will send the evidence made available for each party and each party's advisor, if any, to inspect and review [through an electronic format or hard copy]. SMC is not under an obligation to use any specific process or technology to provide the evidence and shall have the sole discretion in terms of determining format and any restrictions or limitations on access.

The parties will have ten (10) business days to inspect and review the evidence and submit a written response by email to the investigator. The investigator will consider the parties' written responses before completing the Investigative Report.

SMC may provide the parties five (5) business days after the initial inspection and review of evidence, and before the investigator completes their Investigative Report, to provide additional evidence in response to their inspection and review of the evidence, and then provide the parties five (5) business days to inspect, review, and respond to the party's additional evidence through a written response to the investigator. Those written responses may be disclosed to the parties.

Any evidence subject to inspection and review will be available at any hearing, including for purposes of cross-examination.

The parties and their advisors must sign an agreement not to disseminate any of the evidence subject to inspection and review or use such evidence for any purpose unrelated to the Title IX Grievance process.

The parties and their advisors agree not to photograph or otherwise copy the evidence.

Inclusion of Evidence Not Directly Related to the Allegations

Evidence obtained in the investigation that is determined in the reasoned judgment of the investigator not to be directly related to the allegations in the Formal Complaint will be included in the appendices to the investigative report.

Investigative Report

The Title IX Coordinator and/or an investigator designated by the Title IX Coordinator will create an Investigative Report that fairly summarizes relevant evidence and will provide that Report to the parties at least ten (10) business days prior to the hearing in an electronic format or a hard copy for each party's review and written response.

The Investigative Report is not intended to catalog all evidence obtained by the investigator, but only to provide a fair summary of that evidence.

Only relevant evidence (including both inculpatory and exculpatory—i.e., tending to prove and disprove the allegations) will be referenced in the Investigative Report.

The investigator may redact irrelevant information from the Investigative Report when that information is contained in documents or evidence that is/are otherwise relevant.

Title IX Grievance Hearings

General Rules of Hearings

SMC will not issue a disciplinary sanction arising from an allegation of covered sexual harassment without holding a live hearing.

The live hearing may be conducted with all parties physically present in the same geographic location, or at SMC's discretion, any or all parties, witnesses, and other participants may appear at a live hearing virtually through Microsoft Teams. This technology will enable participants to simultaneously see and hear each other. At its discretion, SMC may delay or adjourn a hearing based on technological errors not within a party's control.

All proceedings will be recorded through audiovisual recording or transcript. That recording or transcript will be made available to the parties for inspection and review.

Prior to obtaining access to any evidence, the parties and their advisors must sign an agreement not to disseminate any of the testimony heard or evidence obtained in the hearing or use such testimony or evidence for any purpose unrelated to the Title IX Grievance Process. Once signed, this Agreement may not be withdrawn.

Continuances or Granting Extensions

SMC may determine that multiple sessions or a continuance (i.e., pausing the hearing until a later date or time) is needed to complete a hearing. If so, SMC will notify all participants and endeavor to accommodate all participants' schedules and complete the hearing as promptly as practicable.

As a general rule, no new evidence or witnesses may be submitted during a live hearing.

If a party identifies new evidence or witnesses that were not reasonably available prior to the live hearing and could affect the outcome of the matter, the party may request that such evidence or witnesses be considered at the live hearing.

The Decision-Maker will consider this request and make a determination regarding (1) whether such evidence or witness testimony was actually unavailable by reasonable effort prior the hearing, and (2) whether such evidence or witness testimony could affect the outcome of the matter. The party offering the newly discovered evidence or witness has the burden of establishing these questions by a preponderance of the evidence.

If the Decision-maker answers in the affirmative to both questions, then the parties will be granted a reasonable pause in the hearing to review the evidence or prepare for questioning of the witness.

Participants in the Live-Hearing

Live hearings are not public, and the only individuals permitted to participate in the hearing are as follows:

Complainant and Respondent [The Parties']

1. The parties cannot waive the right to a live hearing.
2. SMC may still proceed with a live hearing in the absence of a party and may reach a determination of responsibility in their absence, including through any evidence gathered and statements made. 85 Fed. Reg. 30026, 30361 (May 19, 2020).
 - a. *Please note in the originally released Final Rule, prior statements made by a party had to be excluded in the maker of the statement did not submit to cross-examination. However, in August 2021, the Department of Education announced they would "immediately cease enforcement of the part of § 106.45(b)(6)(i) regarding the prohibition against statements not subject to cross-examination."* [Letter to Students, Educators, and Other Stakeholders Victims Rights Law Center et al. v. Cardona \(PDF\)](#)
3. SMC will not threaten, coerce, intimidate, or discriminate against the party in an attempt to secure the party's participation. See 34 CFR § 106.71; see also 85 Fed. Reg. 30026, 30216 (May 19, 2020).
4. The decision-maker cannot draw an inference about the determination regarding responsibility based solely on a party's absence from the live hearing or refusal to answer cross-examination or other questions. See 34 C.F.R. § 106.45(b)(6)(i).

The Decision-Maker

1. The hearing body will consist of a panel of two (2) decision-makers.
2. No member of the hearing body will also have served as the Title IX Coordinator, Title IX Investigator, or advisor to any party in the case, not may any member of the hearing body serve on the appeals body on the case.

3. No member of the hearing body will have a conflict of interest or bias in favor of or against complainants or respondents generally, or in favor or against the parties to a particular case.
4. The hearing body will be trained on topics including how to serve impartially, issues of relevance, including how to apply the rape shield protections provided for complainants, and any technology to be used at the hearing.
5. The parties will have an opportunity to raise an objection regarding a decision-maker's actual or perceived conflicts of interest or bias at the commencement of the live-hearing.

Advisor of Choice

1. The parties have the right to select and advisor of their choice, who may be, but does not have to be, an attorney.
2. The advisor of choice may accompany the parties to any meeting or hearing they are permitted to attend, but may not speak for the party, except for the purpose of cross-examination and direct examination.
3. The parties are not permitted to conduct cross-examination; it must be conducted by the advisor. As a result, if a party does not select an advisor, SMC will select an advisor to serve in this role for the limited purpose of conducting the cross-examination at no fee or charge to the party.
4. The advisor is not prohibited from having a conflict of interest or bias in favor of or against complainants or respondents generally, or in favor or against the parties to the particular case.
5. The advisor is not prohibited from being a witness in the matter.
6. If a party does not attend the live hearing, the party's advisor may appear and conduct cross-examination on their behalf. 85 Fed. Reg. 30026, 30340 (May 19, 2020).
7. If neither a party nor their advisor appear at the hearing, SMC will provide an advisor to appear on behalf of the non-appearing party. 85 Fed. Reg. 30026, 30339-40 (May 19, 2020).

Witnesses

1. Witnesses cannot be compelled to participate in the live hearing and have the right not to participate in the hearing free from retaliation. 85 Fed. Reg. 30026, 30360 (May 19, 2020).
2. If a witness does not submit to cross-examination, as described below, the decision-maker cannot rely on any statements by that witness in reaching a determination regarding responsibility, including any statement relayed by the absent witness to a witness or a party who testifies at the live hearing. 85 Fed. Reg. 30026, 30347 (May 19, 2020).

Hearing Procedures

For all live hearings conducted under this Title IX Grievance Process, the procedure will be as follows:

1. Decision-maker/Administrative Hearing Officer will open and establish rules and expectations for the hearing.
2. The Parties will be given the opportunity to provide opening statements.
3. Decision-maker will ask questions of the Parties and Witnesses.
4. Parties will be given the opportunity for live cross-examination after Decision-maker conducts its initial round of questioning. During the Parties' cross-examination, the decision-maker will have the authority to pause cross-examination at any time for the purpose of asking their own follow up questions; and any time necessary to enforce the established rules of decorum.
5. Should a Party or Party's advisor choose not to cross-examine a Party or Witness, the Party shall affirmatively waive cross-examination through a written or oral statement to the Decision-maker. A Party's waiver of cross-examination does not eliminate the ability of the Decision-maker to use statements made by the Party.

Live Cross-Examination Procedure

Each party's advisor will conduct live cross-examination of the other party or parties and witnesses. During this live cross-examination the advisor will ask the other party or parties and witnesses relevant questions and follow-up questions, including those challenging credibility, directly, orally, and in real time.

Before any cross-examination question is answered, the decision-maker will determine if the question is relevant. Cross-examination questions that are duplicative of those already asked including by the decision-maker may be deemed irrelevant if they have been asked and answered.

Review of Transcript/Recording

The recording/transcript of the hearing will be available for review by the parties within ten (10) business days unless there are extenuating circumstances. The recording/transcript of the hearing will not be provided to parties or advisors of choice.

Determination Regarding Responsibility

Standard of Proof

SMC uses the preponderance of the evidence standard for investigations and determinations regarding responsibility of formal complaints covered under this Policy. This means that the investigation and hearing determine whether it is more likely than not that a violation of the Policy occurred.

General Considerations for Evaluating Testimony and Evidence

While the opportunity for cross-examination is required in all Title IX hearings, determinations regarding responsibility may be based in part, or entirely, on documentary, audiovisual, and digital evidence, as warranted in the reasoned judgment of the decision-maker.

Decision-makers shall not draw inferences regarding a party or witness' credibility based on the party or witness' status as a complainant, respondent, or witness, nor shall it base its judgments in stereotypes about how a party or witness would or should act under the circumstances.

Generally, credibility judgments should rest on the demeanor of the party or witness, the plausibility of their testimony, the consistency of their testimony, and its reliability in light of corroborating or conflicting testimony or evidence.

Still, credibility judgments should not rest on whether a party or witness' testimony is non-linear or incomplete, or if the party is displaying stress or anxiety.

Decision-makers will afford the highest weight relative to other testimony to first-hand testimony by parties and witnesses regarding their own memory of specific facts that occurred. Both inculpatory and exculpatory (i.e., tending to prove and disprove the allegations) evidence will be weighed in equal fashion.

Except where specifically barred by the Title IX Final Rule, a witness' testimony regarding third-party knowledge of facts at issue will be allowed but will generally be accorded lower weight than testimony regarding direct knowledge of specific facts that occurred.

The Final Rule requires that SMC allow parties to call “expert witnesses” for direct and cross-examination. SMC does not provide for expert witnesses in other proceedings. While the expert witness will be allowed to testify and be cross-examined as required by the Final Rule, the decision-maker will be instructed to afford lower weight to non-factual testimony of the expert relative to fact witnesses, and any expert testimony that is not directed to the specific facts that occurred in the case will be afforded lower weight relative to fact witnesses, regardless of whether the expert witness testimony is the subject of cross-examination and regardless of whether all parties present experts as witnesses.

The Final Rule requires that SMC allow parties to call character witnesses to testify. SMC does not provide for character witnesses in other proceedings. While the character witnesses will be allowed to testify and be cross-examined as required by the Final Rule, the decision-maker will be instructed to afford very low weight to any non-factual character testimony of any witness.

The Final Rule requires that SMC admit and allow testimony regarding polygraph tests (“lie detector tests”) and other procedures that are outside of standard use in academic and non-academic conduct processes. While the processes and testimony about them will be allowed to testify and be cross-examined as required by the Final Rule, the decision-maker will be instructed to afford lower weight to such processes relative to the testimony of fact witnesses.

Where a party or witness’ conduct or statements demonstrate that the party or witness is engaging in retaliatory conduct, including but not limited to witness tampering and intimidation, the Decision-maker may draw an adverse inference as to that party or witness’ credibility.

Components of the Determination Regarding Responsibility

The written “Determination Regarding Responsibility” will be issued simultaneously to all parties through their SMC email account, or other reasonable means as necessary. The Determination will include:

1. Identification of the allegations potentially constituting covered sexual harassment.
2. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held.
3. Finding of fact supporting the determination.
4. Conclusions regarding which section of the SMC Code of Student Conduct, if any, the respondent has or has not violated.
5. For each allegation:
 - a. A statement of, and rationale for, a determination regarding responsibility.
 - b. A statement of, and rationale for, any disciplinary sanctions the recipient imposes on the respondent.
 - c. A statement of, and rationale for, whether remedies designed to restore or preserve equal access to the recipient’s education program or activity will be provided by the recipient to the complainant.
6. The recipient’s procedures and the permitted reasons for the complainant and respondent to appeal (described below in “Appeal”).

Timeline of Determination Regarding Responsibility

If there are no extenuating circumstances, the determination regarding responsibility will be issued by SMC within ten (10) business days of the completion of the hearing.

Finality

The determination regarding responsibility becomes final either on the date that SMC provides the parties with the written determination of the result of the appeal, if an appeal is filed consistent with the procedures and timeline outlined in “Appeals” below, or if an appeal is not filed, the date on which the opportunity to appeal expires.

Appeals

Each party may appeal (1) the dismissal of a formal complaint or any included allegations and/or (2) a determination regarding responsibility. To appeal, a party must submit their written appeal within five (5) business days of being notified of the decision, indicating the grounds for appeal.

The limited grounds for appeal available are as follows:

- Procedural irregularity that affected the outcome of the matter (i.e., a failure to follow SMC’s own procedures).
- 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.
- The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against an individual party, or for or against complainants or respondents in general, that affected the outcome of the matter.
- Contention that the sanction is inappropriate relative to the severity of the violation.

The submission of appeal stays any sanctions for the pendency of an appeal. Supportive measures and remote learning opportunities remain available during the pendency of the appeal.

If a party appeals, SMC will as soon as practicable notify the other party in writing of the appeal, however, the time for appeal shall be offered equitably to all parties and shall not be extended for any party solely because the other party filed an appeal.

Appeals may be no longer than five (5) pages (including attachments). Appeals should be submitted in electronic format using ARIAL or TIMES NEW ROMAN, 12-point font, and single-spaced. Appeals should use footnotes, not endnotes. Appeals that do not meet these standards may be returned to the party for correction, but the time for appeal will not be extended unless there is evidence that technical malfunction caused the appeal document not to meet these standards.

Appeals will be decided by a Deputy Title IX Coordinator or designee who will be free of conflict of interest and bias, and will not serve as an investigator, Title IX Coordinator, or hearing decision-maker in the same matter.

Outcome of appeal will be provided in writing simultaneously to both parties and included rationale for the decision.

Retaliation

SMC will keep the identity of any individual who has made a report or complaint of sex discrimination confidential, including the identity of any individual who has made a report or filed a Formal Complaint of sexual harassment under this Title IX Grievance Policy, any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, and any witness, except as permitted

by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding under this Title IX Grievance Policy.

No person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX of the Education Amendments of 1972 or its implementing regulations.

No person may intimidate, threaten, coerce, or discriminate against any individual 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 Title IX Grievance Policy.

Any intimidation, threats, coercion, or discrimination, for the purpose of interfering with any right or privilege secured by Title IX, or its implementing regulations constitutes retaliation. This includes any charges filed against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but that arise from the same facts or circumstances as a report or complaint of sex discrimination or a Formal Complaint of sexual harassment.

Complaints alleging retaliation may be filed according to SMC's grievance procedures for employees, listed in section K of the SMC Policies and Procedures manual.

Policy History

This policy is subject to frequent review. Any changes to the policy will go into effect immediately. The revised policy will be published on the SMC at the following link: [Title IX Statement/Sexual Violence - Spartanburg Methodist College \(smcsc.edu\)](https://www.smcs.edu/Title-IX-Statement-Sexual-Violence).

Approved:
August 2020

Reviewed and Updated:
September 2021
January 2022