

# AP 139B – Sexual Harassment Process

Associated Board Policy: 139

Procedure Owner: Executive Director of Student Affairs

Related Procedures: 139A – Sexual Harassment Procedure

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## **I. Procedure Scope and Purpose**

This seven-step process has been put in place to aid and assist any individual who is a part of the Cowley College community in understanding the resolution process when wanting to make a formal complaint.

## **II. Definitions**

## **III. Procedure**

### **The 7 Steps of the Sexual Harassment Process**

1. Intake Report or Notice
2. Formal Complaint
3. Initial Assessment: Review of Jurisdiction & Applicable Policy Process & Optional Informal Resolution
4. Investigation (with possibility of optional informal resolution)
5. Formal Review of Evidence & Investigation Report
6. Live Hearing & Determination
7. Appeal

#### **A. Intake Report or Notice**

Upon receiving notice of a report of sexual misconduct, the Title IX Coordinator will seek to meet with the Reporting Party (i.e., the alleged victim of the sexual misconduct) to review rights, options, and available resources, including a discussion of potential supportive/interim measures, contacting parents or a relative, seeking legal advice, seeking personal counseling, pursuing legal action against the perpetrator, filing a Formal Complaint, or requesting that no further action be taken.

The Title IX Coordinator will initiate at least one of three responses:

1. Offering interim measures because the Reporting Party does not want to file a formal complaint; and/or
2. An informal resolution (upon submission of a formal complaint); and/or
3. A Formal Grievance Process including an investigation and a hearing (upon submission of a formal complaint).

The College uses the Formal Grievance Process to determine whether or not the Policy has been violated. If so, the College will promptly implement effective remedies designed to ensure that it is not deliberately indifferent to harassment or discrimination, their potential recurrence, or their effects.

## **B. Formal Complaint**

If a Reporting Party decides to pursue an investigation, or the Title IX Coordinator determines that an investigation is needed, a formal complaint must be submitted in writing. This formal complaint provides details as it relates to the allegation, including the name(s) of the Respondent(s), dates and times of each incident, a description of what occurred, and any documentation in support of the concern. The Reporting Party must be participating in, or attempting to participate in, one or more of the College's education programs or activities. A formal complaint can only be filed by the Reporting Party or the Title IX Coordinator.

## **C. Initial Assessment: Review of Jurisdiction & Applicable Policy Process & Optional Informal Resolution**

If notice is given, the Title IX Coordinator seeks to determine if the person impacted wishes to make a formal complaint, and will assist them to do so, if desired.

After a formal complaint is filed, it will be assessed to ensure whether it falls within the scope of Cowley College's policy and procedures and to ensure compliance with applicable federal laws and regulations.

1. The Title IX Coordinator works with the Reporting Party to ensure they are aware of the right to have an Advisor of their choice.
2. The Title IX Coordinator works with the Reporting Party to determine whether the Reporting Party prefers a supportive and remedial response, an informal resolution option, or a formal investigation and grievance process.
3. If a supportive and remedial response is preferred, the Title IX Coordinator works with the Reporting Party to identify their wishes, assesses the request, and implements accordingly. No Formal Grievance Process is initiated, though the Reporting Party can elect to initiate one later, if desired.
4. In lieu of proceeding with an investigation and hearing, a Reporting Party may request that a formal complaint be resolved through informal resolution. Informal resolutions may include discussions, mutually agreed upon plans of action, or mediation. Informal resolutions are only available if the Title IX Coordinator agrees that it provides a reasonable outcome for the situation, there are no additional safety concerns, and both the Reporting Party and Respondent confirm in writing that they are voluntarily entering into the informal resolution process.
5. If a Formal Grievance Process is preferred, the Title IX Coordinator determines if the misconduct alleged falls within the scope of Title IX. If it does, the Title IX Coordinator will initiate the formal investigation and grievance process. If it does not, the Title IX Coordinator determines that Title IX does not apply and will dismiss the complaint, assesses which policies may apply, which resolution process is applicable, and will refer the matter accordingly. Please note that dismissing a complaint under Title IX is solely a procedural requirement under Title IX, and does not limit the College's authority to address a complaint with an appropriate process and remedies.

At any time during this assessment or an investigation, a formal complaint must be dismissed for the following reasons:

1. If the conduct alleged in the formal complaint would not constitute sexual harassment as defined in this policy, even if proved, and/or
2. If the conduct did not occur in the college's education program or activity, or
3. If the conduct did not occur against a person in the United States, or
4. If at the time of filing a formal complaint, a reporting party is not participating in or attempting to participate in the education program or activity of the College.

At any time during this assessment or formal investigation, a formal complaint may be dismissed, in the College's discretion, for the following reasons:

1. A reporting party notifies the Title IX Coordinator in writing that the reporting party would like to withdraw the formal complaint or any allegations therein;
2. The respondent is no longer enrolled or employed by the college; or
3. Specific circumstances prevent the college from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

#### **D. Investigation (with possibility of optional informal resolution)**

A trained Investigator(s) will provide an investigation that is prompt, thorough, reliable, equitable, fair, and impartial. They will interview the Reporting Party, the Respondent, and witnesses, gather evidence, and will write an investigation report summarizing the procedure of the investigation and the evidence collected.

With an investigation:

1. The burden of proof and the burden of gathering evidence sufficient to make a determination is on the College.
2. The Reporting Party and Respondent have equal opportunity to provide witnesses, and other evidence in support of their claims.
3. The Reporting Party and Respondent have the right to an advisor of choice to join them during this investigation and hearing process. The advisor may be a friend, faculty or staff member, family member, or an attorney, and each party is allowed only one advisor but cannot be someone that is a direct witness or party in the investigation.
4. Prior to their interview, the parties will be given sufficient notice, in writing, so that they can prepare and meaningfully participate.

#### **E. Formal Review of Evidence & Investigation Report**

When an investigation is completed, a report is written by the Investigator(s) that summarizes the procedure of the investigation and the evidence collected. Cowley College will provide the Reporting Party, Respondent, and their Advisors an opportunity to review the evidence as well as the draft investigative report prior to finalizing it for the Hearing Officer(s) and give them an opportunity to provide additional relevant materials and witnesses to be interviewed and considered before the investigative report is finalized.

## **F. Hearings**

The final investigation report is provided to a Hearing Officer(s). The Hearing Officer(s) will be responsible for determining if this policy was violated and to determine appropriate action based on the facts presented. A live hearing will be scheduled and recorded. The parties will be required to have their advisor present for the live hearing. If the parties do not have an advisor available for the live hearing, which will result in the party being provided an advisor for the purpose of conducting questioning of the other party and witnesses at the hearing.

A Respondent, Reporting Party, or witness that does not attend the live hearing will have the information they provided during the investigation removed from consideration of the determination made in the live hearing. A written determination of the investigation and hearing will be simultaneously provided to the Reporting Party and Respondent. Each party will have the option of appealing the decision and will be provided the specifics of that process in the determination letter.

### **1. Standard of Evidence**

Cowley College uses a preponderance of evidence standard. The Hearing Officer(s) consider whether, given the available credible evidence, it is "*more likely than not*" that a violation occurred. This standard is sometimes explained as "50% plus a feather."

### **2. Past History**

The past sexual history or character of an individual is not considered unless it is determined to be highly relevant. All such information sought to be entered for consideration by a party or the College will be presumed irrelevant until evidence of its relevance is offered.

## **G. Appeal**

The Reporting Party or Respondent may appeal a dismissal or a determination after hearing. The request for appeal must be submitted in writing to the Title IX Coordinator within five days of the delivery of the Notice of Outcome. The appeal process will be included in the dismissal or determination letter. Appeals are limited to the following grounds:

1. Procedural irregularity that affected the outcome of the matter;
2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
3. The Title IX Coordinator, Investigator(s), or Hearing Officer(s) had a conflict of interest or bias for or against Reporting Party's or Respondents generally or the specific Reporting Party or Respondent that affected the outcome of the matter.

If any of the grounds in the Request for Appeal do not meet the grounds in this Policy, that request will be denied by the Title IX Coordinator and/or Appeal Chair, the parties and their Advisors will be notified in writing of the denial and the rationale. If any of the grounds in the Request for Appeal meet the grounds in this Policy, then the

Title IX Coordinator and/or Appeal Chair will notify the other party(s) and their Advisors, and, when appropriate, the Investigators and/or the original Hearing Officer(s).

Upon conclusion of the Appeal process, a written determination of the appeal will be simultaneously provided to the Reporting Party and Respondent.

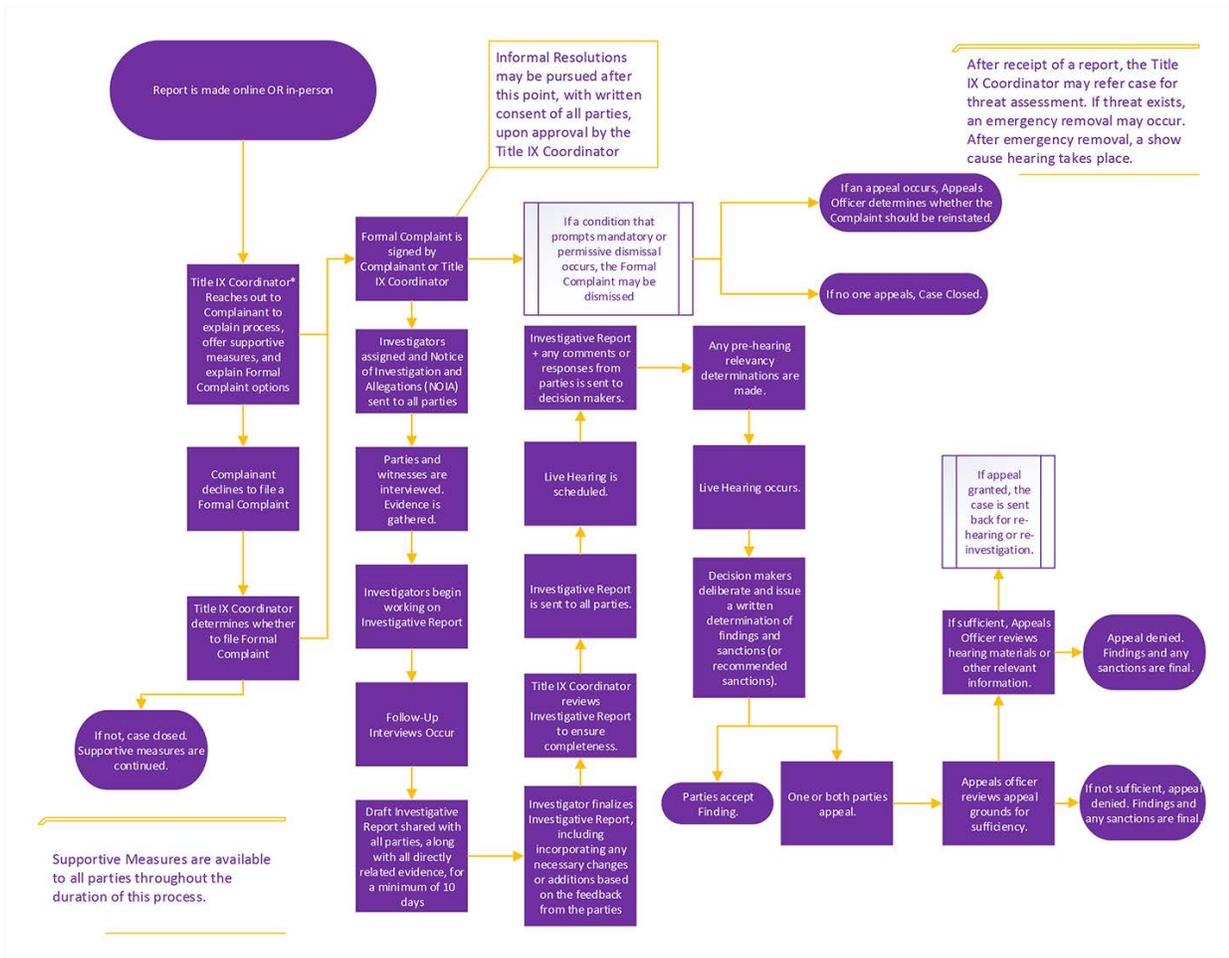
#### **H. Revision of this Policy and Procedures**

This Policy and procedures supersede any previous policy(ies) addressing harassment, sexual misconduct, discrimination, and/or retaliation under Title IX and will be reviewed and updated annually by the Title IX Coordinator. The College reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

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

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

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



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**IV. Effective Date(s)**

This procedure will become effective: August 1, 2020

Revised on: December 14, 2020

**V. Signature and Title**

This procedure is implemented by: 

Title: Executive Director of Student Affairs