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# **SWACC Title IX Resource Packet**

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**SWACC**  
Statewide Association of Community Colleges

# INTRODUCTION

Title IX applies to student sexual harassment and misconduct matters. Under regulatory guidance, Title IX matters need to be handled carefully with a number of specific requirements. This guide was put together to assist Title IX Coordinators and Investigators with an initial response to Title IX matters. This packet contains the following documents:

## Part I – Title IX Immediate Response

1. Title IX Immediate Response Flow Chart – for use by administrators/investigators
2. Overview of Immediate Response for Title IX Matters that discusses the following:
  - Initial Response
  - Interim Measures
  - Measures to Consider
  - Reporting Requirements
  - Special Considerations
  - Next Steps
3. Title IX Forms for use in the initial investigation process:
  - Title IX Complainant Initial Meeting Checklist
  - Title IX Respondent Initial Meeting Checklist
  - No Contact Directive Form (Interim Measure)
  - Safety Measures Form (Interim Measure)
4. Title IX Resources for Parties to be distributed to parties to assist with understanding the process:
  - Title IX Process Flow Chart for Parties
  - Complainant Resource Packet
  - Respondent Resource Packet

## Part II

Many districts are exploring the possibility of adopting a Hearing Panel process for handling Title IX matters. This section provides information about when to adopt a hearing panel based on current guidance, including suggested steps in creating the hearing panel model, and form policy language for the hearing panel process. You will find the following documents in this section:

1. Adopting A Hearing Panel
2. Hearing Process – Form Policy Language

The information contained herein was developed by SWAAC in cooperation with Title IX Consultant, Megan C. Farrell, [www.megancfarrell.com](http://www.megancfarrell.com), for the exclusive use of its members. Use of these documents by non-SWACC members and/or outside the SWACC-member college environment requires explicit permission of SWACC and Consultant.

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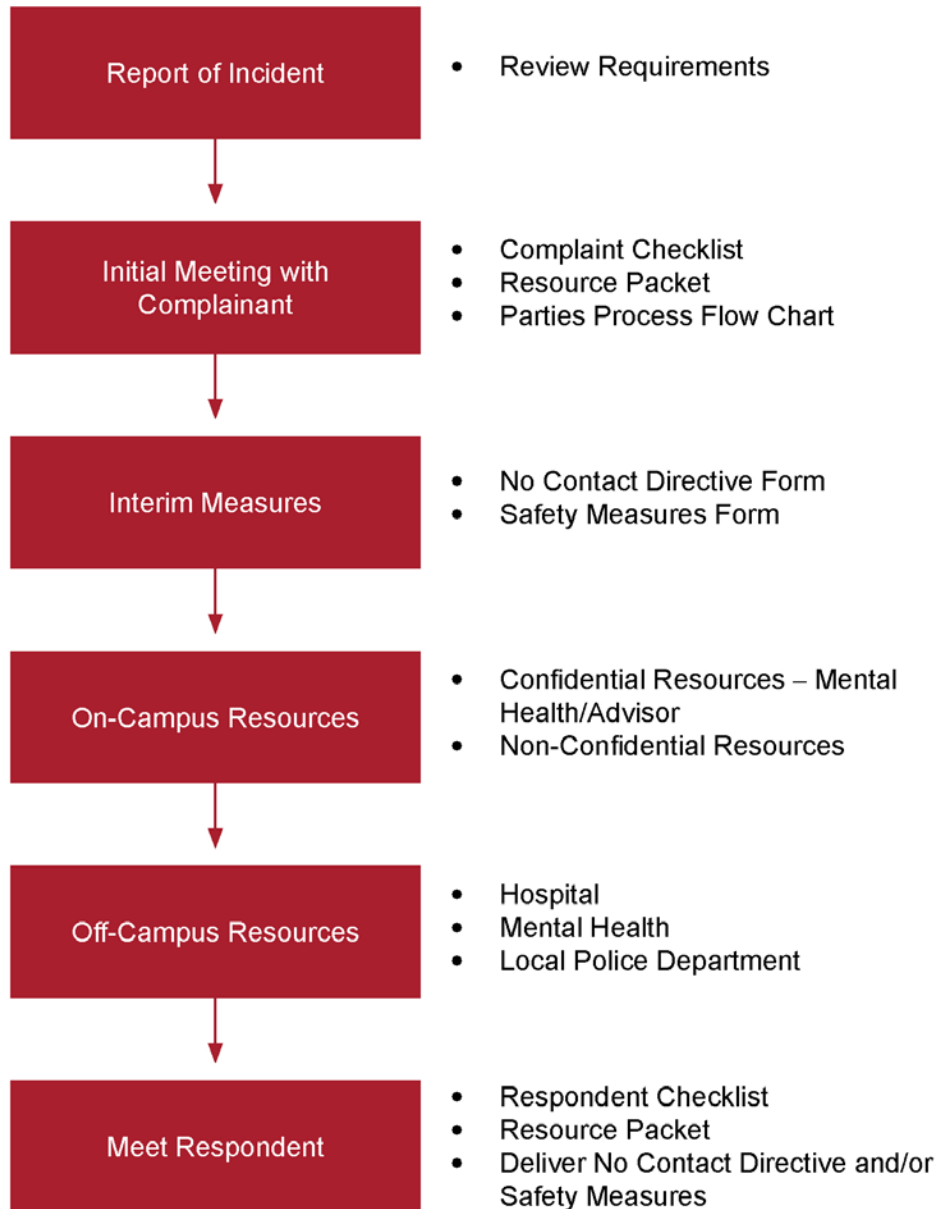
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# **Title IX Immediate Response Flow Chart**



# TITLE IX IMMEDIATE RESPONSE FLOW CHART





**Notice of Title IX  
Matter – Overview of  
Immediate Response**



# NOTICE OF TITLE IX MATTER – IMMEDIATE RESPONSE

## INITIAL RESPONSE

Interim Measures  
Reporting Requirements  
Special Considerations  
Next Steps

## INTERIM MEASURES

REQUIREMENT – Stop, Prevent, and Remedy

- GOAL: Prevent further harassment
- Review classes to determine if Complainant and Respondent are in same classes
  - Online scheduling system
- Examine college: related teams, clubs, etc. to determine if Complainant and Respondent are in same groups
- Other school: sponsored activities to consider
  - College events – games, dances
  - Ask Complainant and Respondent

## MEASURES TO CONSIDER

No Contact Order/Directive

- No Contact Order – an order requires parties to comply without regard to their agreement
- No contact in person, verbally, texting, social media, etc.
- Acknowledgement of receipt/understanding
- Online scheduling system

Safety Plan

- More extensive plan that addresses classes, parking, housing, employment, and any other concerns

## REPORTING REQUIREMENTS

- Upon notice of an incident or potential incident of sex discrimination, sexual harassment, or sexual misconduct, you must report to the Title IX Office
  - INSERT TITLE IX COORDINATOR CONTACT INFORMATION
- Input information into the online reporting system (if applicable)
- Determine if any external reporting is required
  - Child Protective Services (CPS) for Mandatory Reporting
  - Local police

## SPECIAL CONSIDERATIONS

- Reporting party is not complainant
- Complainant does not want to move forward
  - Analyze whether college initiates investigation
- Either/both parties has/have a disability
- Named respondent has had other disciplinary issues in the past



- Contact Information Technology if evidence exists on college servers and is at risk of being lost and/or destroyed

### **NEXT STEPS**

- Contact the Title IX Office
- Put interim measures in place and communicate the interim measures to both parties
- Meet with Complainant to review Complainant Resource Packet and gather basic information about the allegations
- Meet with Respondent to review Respondent Resource Packet
  - Send Notice of Allegations to initiate investigation process
- Keep timely and accurate notes



# Title IX Forms



# TITLE IX COMPLAINANT INITIAL MEETING CHECKLIST

Meet with Complainant  
 Date and Time of Meeting: \_\_\_\_\_  
 Attendees: \_\_\_\_\_

Review potential Interim Measures

- Classes and Course-Related Changes
- Parking
- School Activities
- School Events
- School Employment
- Traveling to/from Campus
- Escort Services
- Increased Security
- Monitoring Specific Areas
- Other concerns related to safety or additional details for any checked box:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Complainant requesting No Contact Directive

- Yes
- No

If no, explain why: \_\_\_\_\_

\_\_\_\_\_

Complainant requesting Safety Plan

- Yes
- No

If no, explain why: \_\_\_\_\_

\_\_\_\_\_

Review and discuss policy/procedure and provide SWACC Title IX Process Flow Chart

Provide complaint forms

Provide Complainant Resource Packet

Designate point person for Complainant

- Yes  
Name of point person: \_\_\_\_\_
- No

Request for campus resources (check any that Complainant is seeking):

- Counselor

- Advisor
- Process Support
- Request for off-campus resources (check any that Complainant is seeking):
  - Outreach to police
  - Assistance with restraining order
  - Visit to hospital or other medical treatment
  - Connection to any other off-campus resourcesDesignate type/organization: \_\_\_\_\_

---

Name of Employee Meeting Complainant  
(Printed)

---

Date of Meeting

---

Signature of Employee

- 
- \* CONSIDERATIONS when deciding Interim Measures:
    - No fixed rules; individualized
    - No assumptions that favor one party or another
    - Attempt to not deprive any party of his/her/their education
    - Must be reviewed with both parties before finalizing
    - Must be available to both parties

# TITLE IX RESPONDENT INITIAL MEETING CHECKLIST

- Meet with Respondent  
 Date and Time of Meeting: \_\_\_\_\_  
 Attendees: \_\_\_\_\_
  
- Deliver and review Notice of Allegations
  
- Review potential Interim Measures
  - Classes and Course-Related Changes
  - Parking
  - School Activities
  - School Events
  - School Employment
  - Traveling to/from Campus
  - Escort services
  - Increased Security
  - Monitoring Specific Areas
  - Other concerns related to safety or additional details for any checked box:  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
  
- Respondent requesting No Contact Directive
  - Yes
  - No
  - If no, explain why:  
 \_\_\_\_\_
  
- Respondent requesting Safety Plan
  - Yes
  - No
  - If no, explain why:  
 \_\_\_\_\_
  
- Review and discuss policy/procedure and provide SWACC Title IX Process Flow Chart
  
- Provide Respondent Resource Packet
  
- Designate point person for Respondent
  - Yes
  - Name of point person: \_\_\_\_\_
  - No
  
- Request for campus resources (check any that Respondent is seeking):
  - Counselor

- Advisor
- Process Support
- Request for off-campus resources (check any that Respondent is seeking):
  - Outreach to police
  - Assistance with restraining order
  - Visit to hospital or other medical treatment
  - Connection to any other off-campus resourcesDesignate type/organization: \_\_\_\_\_

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Name of Employee Meeting Respondent  
(Printed)

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Date of Meeting

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Signature of Employee

- 
- \* CONSIDERATIONS when deciding Interim Measures:
- No fixed rules; individualized
  - No assumptions that favor one party or another
  - Attempt to not deprive any party of his/her/their education
  - Must be reviewed with both parties before finalizing
  - Must be available to both parties

# No CONTACT DIRECTIVE

**FILE NO. [###]  
NOTICE TO COMPLAINANT/REPORTER AND RESPONDENT  
[DATE OF ISSUANCE]**

The College has received notice of an allegation involving a potential violation of the College's Policy **[INSERT: policy name and policy number]**. The Directive is not a determination of whether a policy violation occurred but is a measure to protect all the parties involved in this matter. This Directive is effective immediately and will remain in effect until **[INSERT: further notice, the end of the investigation of this matter, the end of the semester, etc.]**.

The Title IX Office issues the following No Contact Directive concerning interactions between student, **[INITIALS]**, and student, **[INITIALS]**:

- Both parties will have no direct contact and will not communicate in person, by phone, through letters, through text message, through social media, and/or any other direct or digital means.
- Both parties will not attempt to make indirect contact with each other by utilizing a third party to make contact with a party on behalf of the other party; through online outreach (e.g., liking a post on social media); by lingering or remaining at school sites where the other party might be (e.g., classroom, dorm or cafeteria); and any other attempts to make indirect contact.
- Both parties will avoid interactions while at the College.
- If the parties encounter each other at the College or at a College-sponsored event or activity, they will avoid making eye contact and move to locations away from each other.
- **[INSERT: any additional measures]**

Violations of the No Contact Directive by either party will be addressed immediately, and the violating party will be subject to disciplinary action.

Please note that College investigations are confidential. College policies prohibit any and all retaliatory behavior or action against any person who reports, testifies about, files a complaint, or otherwise participates in a College complaint, investigation, or grievance process relating to an incident of discrimination, including harassment, intimidation, or bullying. In this matter, both students are protected against retaliation.

If any issue arises concerning the enforcement of this Directive, either student must contact **[INSERT: contact person's name, email address, and phone number]** at the College.

By your signature below, you acknowledge that you have been notified and have received a copy of this No Contact Directive.

## ACKNOWLEDGEMENT OF RECEIPT

\_\_\_\_\_  
Student Name (Printed)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Student Signature

# SAFETY MEASURES

**FILE NO. [###]  
NOTICE TO COMPLAINANT/REPORTER AND RESPONDENT  
[DATE OF ISSUANCE]**

Based on concerns raised in the Title IX investigation, the Title IX Office issues the following Safety Measures that are effective immediately and will remain in effect while this matter is investigated and until further notice. The College reserves the right to revisit and revise these measures at any time.

## **Classes and Course-Related Changes**

*Detail any of the following:*

- Change in sections
- Removal from a course
- Independent study
- Excuse from attending class
- Any other class or course-related changes

## **Parking**

*Detail any of the following:*

- Designation of a parking space
- Designation of a specific parking area
- Outline if a party is not permitted to park in a specific area

## **School Activities**

*Detail any of the following:*

- Removal from school activities
- Restrictions related to participation in school activities
- Excuse from participation in school-required/course-required activities

## **School Events**

*Detail any of the following:*

- Prohibition from attending school events
- Restricted times that a party can attend school events
- Limitations related to school events (e.g., attending specific attending specific concerts, lectures)

## **School Employment**

*Detail any of the following:*

- Hours of work
- Restricted hours related to work
- Reassignment to another work area

## **Traveling to/from Campus**

*Detail any of the following:*

- Use of college transportation
- Restrictions from use of college transportation



**Escort Services**

*Detail any of the following:*

- Who is providing the escort services
- The days/times the escort services are available/required
- How a party can contact escort services when needed
- Limitations when escort is not available (days, hours)

**Increased Security**

*Detail any increased security methods, such as:*

- Additional security staff in designated locations

**Monitoring Specific Areas**

*Detail any of the following:*

- What monitoring is provided
- When monitoring is available or not available
- How to contact monitor provider

**Additional Safety Measures Adopted**

- Detail other safety measures for the parties

Notice of any violations of the Safety Measures should be reported immediately to **[INSERT: contact person's name, email address, and phone number]**. The violating party will be subject to disciplinary action.

Retaliation is prohibited under the policies of the College. Students are cautioned against engaging in behavior that may be considered retaliation for the reporting of a complaint and/or participation in the Title IX investigation. Retaliation includes any negative behavior directed at the individuals who brought this complaint and/or participated in the investigation.

By your signature below, you acknowledge that you have been notified and have received a copy of the Safety Measures.

ACKNOWLEDGEMENT OF RECEIPT

\_\_\_\_\_  
Student Name (Printed)

\_\_\_\_\_  
Date

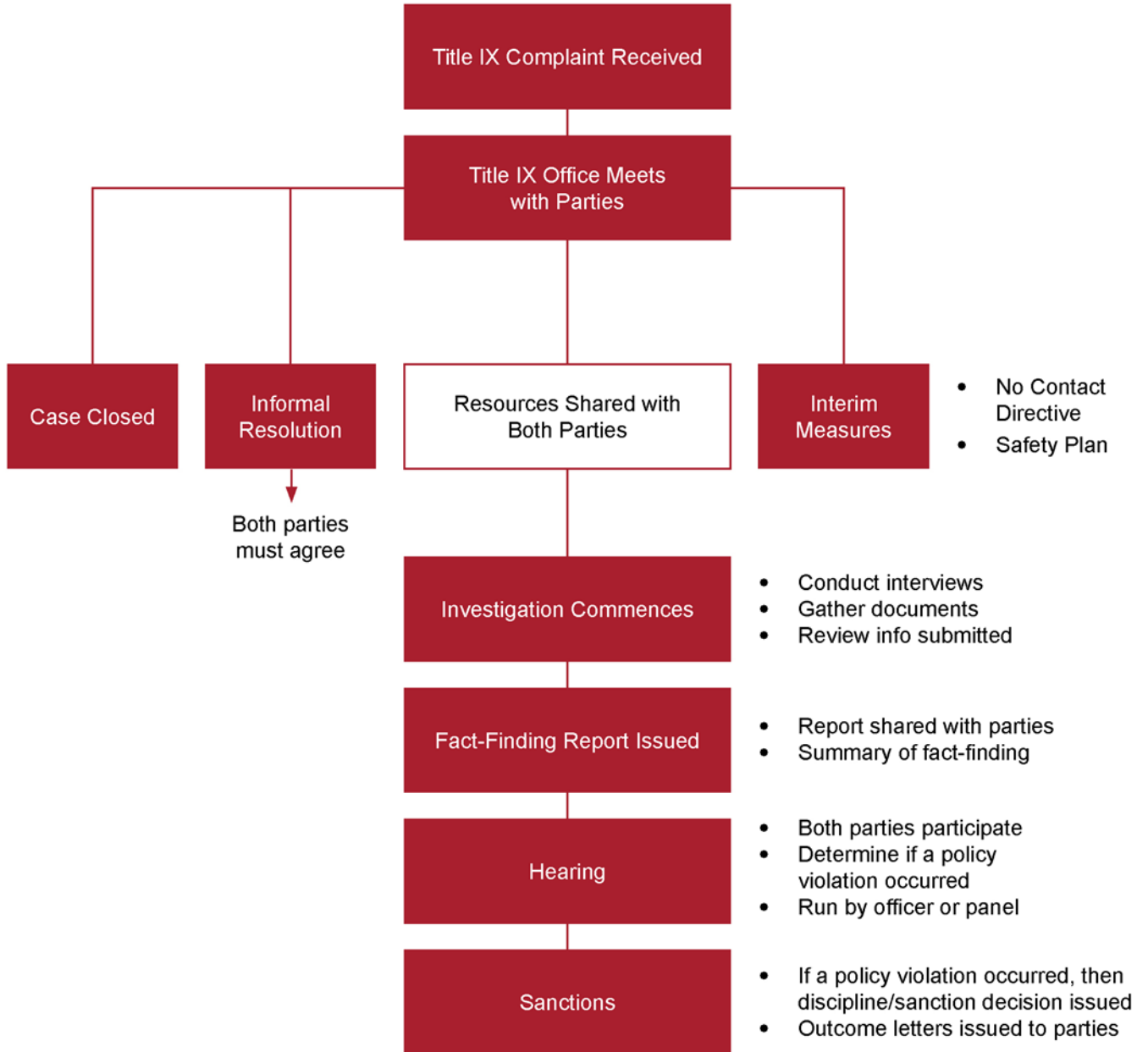
\_\_\_\_\_  
Student Signature



# Title IX Resources for Parties



# TITLE IX PROCESS FLOW CHART FOR PARTIES



# TITLE IX RESOURCES FOR PARTIES

**Introduction:** The College should develop a packet of resources available for each party to a Title IX complaint/investigation. Below is an outline of what should be in each packet.

## A. COMPLAINANT RESOURCE PACKET

### 1. Policy and Procedure

- a. Copy and/or link to college polices and administrative regulations on Title IX matters

### 2. On-Site Support

- a. Contact information for the Title IX Office: Personnel, office address, phone number, and email address
- b. Process Contacts: Any designated employee who can assist a party with process (Complainant Advocate)
- c. Confidential Resources: Mental health professionals or other designated campus confidential resources

### 3. Off-Site Resources

- a. Local resources for victims of violence with contact information
- b. Local hospital that has a Sexual Assault Nurse Examiner (SANE) Nursing Staff and provides access to rape kit
- c. Police Contacts: Local police with information on how to file a criminal complaint or seek a restraining order
- d. Child Protective Services (CPS): Mandatory reporting depending on age of students

### 4. Preservation of Evidence

- a. In the event that an investigation commences, maintain all evidence that could be useful, including phone calls, texts, emails, instant messages, and other types of communications. Take steps to secure this information.
- b. Seek medical attention immediately. Some concerns to consider:
  - i. If you are seeking a rape kit, do not shower, bathe, or douche. Do Not change, destroy, or dispose of clothes. You may have evidence that can be collected up to 72 hours after the encounter.
  - ii. Do not touch, move, or wash anything where the assault occurred, as you may inadvertently destroy evidence.
  - iii. Evidence could exist in your system if you feel that you were drugged.

## B. RESPONDENT RESOURCE PACKET

Although not specifically required, the College should consider a packet for the Respondent to ensure both parties are treated fairly.

### 1. Policy and Procedure

- a. Copy and/or link to college polices and administrative regulations on Title IX matters

### 2. On-Site Support

- a. Contact information for Title IX Office: Personnel, office address, phone number, and email address
- b. Process Contacts: Any designated employee who can assist a party with process (Respondent Advocate)

- c. Confidential Resources: Mental health professionals or other designated campus confidential resources

**3. Off-Site Resources**

- a. Local resources for mental health counseling
- b. Police Contacts: Local police for potential follow-up or information about restraining orders

**4. Preservation of Evidence**

- a. In the event that an investigation commences, maintain all evidence that could be useful, including phone calls, texts, emails, instant messages, and other types of communications. Take steps to secure this information.
- b. Seek medical attention immediately, if needed.



# Adopting A Hearing Panel



# ADOPTING A HEARING PANEL ADJUDICATION PROCESS FOR STUDENT TITLE IX MATTERS SWACC GUIDANCE DOCUMENTS (NOVEMBER 8, 2019)

## INITIAL CONSIDERATIONS

Colleges and universities throughout the country are moving away from single-investigator to hearing panel adjudication of Title IX matters based upon recent judicial and regulatory guidance. In California, Appellate level guidance has recently rejected the single-investigator model. Higher education institutions are changing policies and procedures to reflect this guidance, which is applicable to both public and private institutions throughout California.

Also, proposed federal regulations from the Department of Education, Office for Civil Rights (OCR) outwardly rejects the single-investigator model in favor of hearing panels for all Title IX matters. Although it remains unclear what the final regulations will require, many institutions throughout the country are changing their process to move away from the single-investigator and move toward hearing panels to resolve Title IX formal investigations.

Briefly, the California judicial and proposed federal regulatory guidance are as follows:

## CALIFORNIA APPELLATE DECISION<sup>1</sup>

The Appellate Court in California held that for reasons of “fundamental fairness” in matters where a student faces a severe penalty and the decision turns on witness credibility, the decision-maker must have the opportunity to assess the credibility of critical witnesses. Assessing credibility includes permitting the decision-makers to cross-examine the parties and key witnesses.

Further, the case criticized the use of one individual to serve as investigator, prosecutor, fact-finder, and sentencer. The decision reflects OCR guidance of 2017<sup>2</sup> that sought to separate the decision-makers related to fact-finding and policy violation. Thus, the policies should identify distinct decision-makers for:

- Fact-Finding
- Policy Violation
- Sanctions of Respondent (if necessary)<sup>3</sup>

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<sup>1</sup> Doe v. University of Southern California, 30 Cal.Rpt. 5<sup>th</sup> 1036 (Ct. App. 2019)

<sup>2</sup> OCR Q&A on Sexual Misconduct Letter, September 2017, <https://www2.ed.gov/about/offices/list/ocr/docs/qa-title-ix-201709.pdf>

<sup>3</sup> In the 2017 guidance, the policy violation and sanctioning decision can be made by the same person. However, under Doe, these individual decisions should be made by separate people.

## OCR PROPOSED REGULATIONS

While this proposed guidance has not yet been adopted, most campuses (even outside of California) are altering policies to include use of hearing officers and/or panels in Title IX matters. In sum, the proposed regulations require the use of a hearing officer or panel for Title IX matters and allow for cross-examination by the parties and/or their representatives.

In order to assist with the adoption of a hearing officer or panel process, the following steps are suggested.<sup>4</sup>

### PROCESS 1 – REVIEW CURRENT POLICIES TO DETERMINE CURRENT PROCESS AND REMOVE LANGUAGE CONTRARY TO GUIDANCE

- Review any and all policies/administrative regulations related to Title IX, including the following:
  - BP/AR 3410, 3430, 3435, 3540, 5500, 5520, 5530, 5540, and any other policy addressing protected-class prohibitions on discrimination/harassment, Title IX, sexual misconduct.
  - Remove language related to process inconsistent with the hearing panel procedure (i.e., single investigator models).

### PROCESS 2 – REVIEW DECISION-MAKING POINTS TO DEVELOP A PROPER HEARING PANEL MODEL FOR COLLEGE

#### DECISION 1

- Identify who will take active roles in the process.

Suggestions:

1. Title IX Office gathers facts.
2. Hearing officer/panel makes decision about policy violation.
3. Student Conduct makes decision about sanction if policy violation is found.

#### DECISION 2

- Determine when a hearing officer and/or panel will be used and identify who makes this decision and when.

Suggestion:

Title IX coordinator reviews the facts of the matter and determines if the matter should go to a hearing panel when serious consequences are possible for responding student. Serious consequences should be laid out in the policy – i.e., threat of suspension and/or expulsion.

#### DECISION 3

- Set forth the paperwork/documentation requirements, who is responsible for developing and/or sharing this information internally and externally, and what will be shared throughout and at the conclusion of the process.

Suggestions:

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<sup>4</sup> This guidance assumes all current policies have been revised since OCR issued its guidance in 2017 and retracted guidance from 2011 and 2014.



1. Issue a notice of allegations through the Title IX Office.
2. Collect Title IX documents on fact-finding process through the Title IX Office.
3. Share specified information with the parties prior to the hearing through the Title IX Office and/or provide an opportunity to the parties to inspect the fact-finding file before the hearing.
4. At conclusion, issue outcome letters to the parties detailing the appropriate findings from the hearing officer/panel and provide information on how to file an appeal.

#### DECISION 4

- Describe the role of the hearing officer or hearing panel – members, roles, decision-making authority, examination/cross-examination of witnesses, training, and any other important details about how the panels will be run.<sup>5</sup>

#### Suggestions:

1. Identify the process for finding potential officer/panel members and gather a list of participants.
2. For a hearing officer, this individual will manage the hearing.
3. For a hearing panel, select an odd number of hearing panel members so a majority makes decisions. Identify one chair of the panel for administration purposes to manage and make the final decision on how hearing will run.
4. Provide annual training to officers/panel members and consider just-in-time training before the actual hearing on process and topics such as trauma-informed methods, cultural sensitivity, and avoiding bias and include information about this training in the policy.

#### DECISION 5

- Address how the hearing will be managed.

#### Suggestions:

1. Identify who will be in the room – the parties and advisors, officer/panel members, note-takers, etc.
2. Determine if teleconference will be used to separate the parties and/or witnesses.
3. Officer/chair will manage the hearing process and maintain discretion for how to manage – deciding the witnesses, running hearing, asking questions of parties and witnesses, concluding the hearing, issuing the decision, and memorializing the decision.
4. Provide means for the parties to submit questions to officer/panel for cross-examination purposes.<sup>6</sup>
5. Identify which types of questions will not be asked.
6. Identify what decision will be issued from officer or panel (i.e., policy violation) and which burden of proof will be used (preponderance of the evidence).
7. Determine if audio recording will be permitted, and if so, have the college make the one and only audio recording of the hearing.

#### DECISION 6

- Determine who will make the sanctioning decision, if necessary.

#### Suggestion:

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<sup>5</sup> Please note that because of the sensitive nature of Title IX matters, most schools do not allow students to serve on these hearing panels. Review the members of any standing hearing panels (i.e., for Student Code violations) to determine if the members are appropriate for these types of matters.

<sup>6</sup> Allowing cross-examination by advisors is included in the proposed OCR regulations. Because it is currently not required, it is suggested to allow Officer/Chair to handle this sensitive process.

Student Conduct/Affairs handles discipline decision.

**DECISION 7**

- Review the appeal process.

Suggestion:

In light of changes to hearing panel process, determine if the appeal process is consistent with recently adopted processes and ensure it identifies a unique individual to review the appeal.

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# Hearing Process – Form Policy Language

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# HEARING PROCESS – FORM POLICY LANGUAGE

## WHEN TO USE

The Hearing Process shall be used in Title IX matters where a student faces a severe penalty and the decision turns on witness credibility, as decided at the sole discretion of the Title IX Coordinator. The Hearing Process shall be managed by the Title IX Coordinator.

## ADMINISTRATIVE ROLES IN PROCESS

### Title IX Office

The Title IX Coordinator or designee shall be responsible for managing the hearing process (issuing notice of allegations, notice of hearing officer/panel, etc.) and the necessary logistics (scheduling, notifying witnesses, providing the parties and hearing officer/panel with appropriate documentation and evidence, coordinating videotaping, identifying the location of hearing, and any other support that is necessary for the hearing to run smoothly).

The Title IX Coordinator will designate a Title IX Investigator who is responsible for gathering the fact-finding information from the parties and witnesses and any documentary and/or electronic evidence. The Title IX Investigator will gather this information into a summary Fact Finding Report to be reviewed by the Title IX Coordinator who will submit the Fact-Finding Report to the Hearing Officer/Panel, after those individuals have been selected and the time for objection has expired. The Fact-Finding Report shall be completed within thirty (30) days of the Notice of Allegations and shall present facts only and will not address the policy and/or potential policy violations. *[Consider adding info about the specific contents of the report.]*

### Hearing Officer/Panel

The hearing itself will be conducted by a Hearing Officer/Panel which will be selected from an approved list of qualified candidates who have received the necessary training in Title IX, the college's internal process, the impact of trauma, bias, cultural sensitivity, and any other relevant topic. The Title IX Coordinator will select the Hearing Officer/Panel and will notify the parties of this selection within five (5) days of the date of the Notice of Allegations.

The Hearing Officer/Panel shall conduct the hearing independently, will have responsibility for ensuring the hearing is orderly and fair, and have broad authority to address any behavior which is disruptive to the hearing. The Hearing Officer/Panel will make all decisions about the admissibility of testimony during the process and which questions may be asked, using this policy to guide the process. At the end of the hearing, the Hearing Officer/Panel will make a determination as to whether the evidence supports or does not support a finding of a policy violation using a preponderance of the evidence standard. This decision will be issued in a Final Hearing Report.

**Sanctioning Body (Student Affairs)**

If a policy violation is found, the Title IX Coordinator will forward the Hearing Report to the body tasked with issuing discipline/sanctions. The sanctioning body will make the final decision about discipline taking into account all of the relevant factors in the matter and prior discipline decisions, if appropriate. Notice of Discipline/Sanction will be sent to Respondent by the Sanctioning Body.

**Selection and Notice of the Hearing Officer/Panel**

Title IX Coordinator will select the Hearing Officer/Panel and will advise the parties in writing of the officer/members and the date for the hearing within five (5) days of the Notice of Allegations. Within thirty (30) days of the Notice of Allegations, the Title IX Coordinator will share the Fact-Finding Report.

**Objection to the Hearing Officer/Panel**

Both parties will be notified by the Title IX Coordinator of the selection of the Hearing Officer/Panel and given three (3) days to submit objections to the Title IX Coordinator. The objections must be based on an actual conflict of interest if the Hearing Officer/Panel has a personal relationship with the parties and/or witnesses and/or has demonstrated actual bias towards a party or witness. The Title IX Coordinator will evaluate whether the objection is substantiated, and if it is substantiated, a new Hearing Officer/Panel member will be replaced, as needed.

**Response to the Fact-Finding Report and Request for Witnesses at Hearing**

The parties are permitted to provide the Hearing Officer/Panel with a brief response to the Fact-Finding Report not to exceed five (5) pages (unless prior permission has been granted to exceed this limit). In addition, the parties must submit a list of witnesses that they would like called to the hearing along with the questions that they are requesting be posed to the parties and witnesses within five (5) days of receipt of the Fact-Finding Report. Any response to the Fact-Finding Report and list of witnesses to be called along with proposed questions must be submitted to the Hearing Officer/Panel at least five (5) days prior to the hearing date. All witnesses provided in the list must have been part of the fact-finding by the Title IX Investigator. Witnesses submitted by the parties to testify only to the party's character will not be called.

Coordination of witnesses including notice of hearing date and time will be managed by the Title IX Office.

If the responses to the parties indicates a fatal defect in the Fact-Finding Report, the Hearing Officer/Panel shall consult with the Title IX Coordinator to determine if additional fact-finding is necessary before the hearing. The Title IX Coordinator in his/her sole discretion shall decide whether additional fact finding is necessary or whether to proceed to hearing without additional fact-finding.

**Pre-Hearing Meeting**

The Hearing Officer/Panel shall make all final decisions about the hearing, including who will participate, which questions will be asked, and the order of the proposed hearing testimony. This information will be shared with the parties in separate pre-hearing meetings that will take place prior to the hearing. During the pre-hearing meeting, the parties can ask any questions that they have about the hearing process.

## Hearing Process

The hearing will be managed solely by the Hearing Officer/Panel. Complainant and Respondent and their respective advisors may be present at all times during the hearing unless the Hearing Officer/Panel decides that a party should be excused. When appropriate, the Hearing Officer/Panel in its sole discretion shall make arrangements for the parties to attend remotely or through video conferencing. Witnesses will only attend in order to provide testimony and will be dismissed after providing such testimony.

## Role of Advisors

The parties are entitled to have an advisor of choice support them and provide advice throughout the hearing process. Advisors are not permitted to provide testimony, examine or cross-examine witnesses, and/or participate in the hearing. Advisors are permitted to advise their party during the hearing and time will be given for the parties to confer with advisors during the process. After the testimony of a witness or other party, a party may confer with his/her advisor, and the party may submit additional questions to the Hearing Officer/Panel for the witness or other party. The Hearing Officer/Panel has the sole discretion in determining whether this additional information should be considered and/or whether the additional questions should be asked.

## Opening Statements [OPTIONAL]

The parties may provide an opening statement up to five (5) minutes in length at the start of the hearing, beginning with an opening statement from Complainant followed by an opening statement by Respondent. Both parties can waive giving an opening statement.

## Testimony and Cross-Examination

The Hearing Officer/Panel will ask questions of the parties and witnesses during this stage of the process. The Title IX Investigator may be called to provide clarification to the Title IX Fact Finding Report if necessary and at the discretion of the Hearing Officer/Panel. The questions submitted by the parties will be included in this questioning, unless the Hearing Officer/Panel finds that such questions are objectionable, irrelevant, and/or inflammatory. The Hearing Officer/Panel has the discretion to modify or change the wording of any questions submitted by either party as long as the substance of the inquiry is maintained.

Formal rules of evidence for court proceedings do not apply to the hearing. For example, the Hearing Officer/Panel may consider hearsay or another type of evidence in the hearing, even though it may not be admissible in a civil/criminal trial. If new evidence has come to light since the Fact-Finding Report, the Hearing Officer/Panel will make the decision as to whether it will be considered in the hearing.

Neither the parties nor the Hearing Officer/Panel will make audio recordings of the hearing. *[If a decision is made to allow audio recordings, the college should be the only one making audio recordings]*

## Questioning

All questions submitted by the parties to be asked of other parties and/or witnesses will be considered by the Hearing Officer/Panel, except:

- Questions about the Complainant's sexual history with anyone other than the Respondent (unless testimony goes to show the Respondent did not engage in the misconduct);
- Questions about the Respondent's prior sexual history with anyone other than the Complainant (unless such testimony is used to prove motive and/or pattern of conduct); and/or
- Questions that are irrelevant, harassing, duplicative, or intrude upon the privacy of a party or witness.

### **Closing Statement [OPTIONAL]**

In its discretion, the Hearing Officer/Panel shall allow the parties to make brief closing remarks not to exceed five (5) minutes, beginning with a closing statement by the Respondent followed by a closing statement by the Complainant.

### **Expectations of Parties and Witnesses**

The parties and witnesses are expected to participate fully and truthfully in the hearing. A party's decision to not participate in the process will not stop the process from moving forward. The hearing will use the information collected by the Title IX Office and other parties/witnesses, and the Hearing Officer/Panel will issue its findings, consistent with the provisions set forth in this policy.

### **Standard of Evidence**

A preponderance of the evidence standard will be used by the Hearing Officer/Panel in reaching its determination about whether a policy violation has occurred.

### **NOTICE OF OUTCOME**

The Hearing Officer/Panel will consider all of the information provided and made available at the hearing, and, using a preponderance of the evidence standard, will issue a Final Report that contains the Hearing Officer/Panel's factual findings and whether a policy violation has occurred, including the rationale for reaching the policy violation outcome. This Final Report will be issued within fourteen (14) days of the hearing unless an extension has been granted and/or other extenuating circumstances exist.

The Final Report will be forwarded to the Title IX Coordinator for review to determine if the report complies with the requirements set forth in this policy and the policy at issue. The Title IX Coordinator will then share the Final Report with the parties.

### **APPEAL**

*[Review current appeal process to determine if changes need to be made to have a unique person reviewing appeals.]*