



ADMINISTRATIVE PROCEDURE

TITLE: Responding to Harassment Based on Sex under Title IX

ADMINISTRATIVE PROCEDURE # 3434

RELATED TO POLICY # 3433 PROHIBITION AGAINST SEXUAL HARASSMENT
UNDER TITLE IX

Introduction

UCC encourages members of the College community to report sexual harassment. This administrative procedure only applies to conduct defined as sexual harassment under Title IX and applicable federal regulations, and that meet Title IX jurisdictional requirements. UCC will respond to allegations of sexual harassment and sexual misconduct that fall outside that definition and outside the jurisdiction of the Title IX federal regulations by applying other applicable state and federal laws, and other applicable UCC policies and procedures. In the event of a conflict between an applicable Title IX policy or procedure and another UCC policy or procedure, the Title IX policy or procedure will supersede all other policies.

A. Jurisdictional Requirements and Application of Procedures

1. The Title IX sexual harassment policy and procedures apply to UCC's students, employees, applicants for employment, and applicants for admission, but only if the alleged conduct meets all of the following jurisdictional requirements:
 - a. The conduct took place in the United States.
 - b. The conduct took place in a UCC "education program or activity." This means incidents that occur on campus, as well as off-campus incidents if:
 - 1) the incident occurred as part of the College's "operations"; or
 - 2) the College exercised substantial control over the Respondent and the context of the alleged sexual harassment incident; or
 - 3) the incident occurred at an off-campus building owned or controlled by a student officially recognized by the College (such as a fraternity or sorority house).
 - c. The conduct constitutes "sexual harassment" under Title IX, as defined in AP 3433.

B. Definitions

1. Complainant: A Complainant is an individual who is alleged to be the victim of conduct that could constitute sexual harassment. At the time of filing a Formal Complaint under this administrative procedure, the Complainant must be participating or attempting to participate in a UCC education program or activity. However, a person does not have to be a Complainant to report sexual harassment under this administrative procedure.
2. Consent: Title IX does not define “consent” for purposes of proving whether sexual harassment has occurred. UCC has adopted a definition of “consent” that is applied consistently in all cases. The Title IX Coordinator and other persons who participate in an informal process and/or grievance process under this administrative procedure will receive training regarding the definition of “consent” and its application.
3. Formal Complaint: A Formal Complaint is a document filed and signed by the Complainant, or signed by the Title IX Coordinator, alleging sexual harassment and requesting an investigation. The Formal Complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail. The Title IX Coordinator does not become a Party to the complaint by signing it.
4. Parties: As used in this procedure, this means the Complainant and Respondent.
5. Respondent: A Respondent is an individual reported to be the perpetrator of conduct that could constitute sexual harassment.
6. Sexual Harassment under Title IX: This definition is explained in detail under AP 3433.

C. Designation of UCC’s Title IX Coordinator

1. Questions concerning Title IX may be referred to UCC’s Title IX Coordinator, whose contact information is below:

Mary Flaherty, Chief Student Success Officer and Title IX Coordinator
1140 Umpqua College Road
Roseburg, OR 97470
541-440-7763
Mary.Flaherty@umpqua.edu

2. The Title IX Coordinator’s identity and contact information will be displayed prominently on UCC’s website.

D. Timeline for Reporting Sexual Harassment

1. UCC strongly encourages any Complainant to promptly report sexual harassment. Prompt reporting allows for the collection and preservation of evidence, including

physical evidence, digital media, and witness statements. A delay may limit the College's ability to effectively investigate and respond. Reporting sexual harassment also allows the College to provide a wide variety of support and resources to impacted individuals and to prevent the recurrence of the conduct. However, there is no time limit on a Complainant's right to report sexual harassment under Title IX or to file a Formal Complaint under this administrative procedure.

E. Reporting Sexual Harassment to the Title IX Coordinator

1. Any individual may report sexual harassment to the Title IX Coordinator, and the Title IX Coordinator is required to respond to reports of sexual harassment. The Title IX Coordinator will handle the information reported under this administrative procedure with discretion and will share the information with others only on a need-to-know basis. For example, the Title IX Coordinator may need to address public safety concerns on campus, comply with State and federal legal requirements, or share information to implement supportive measures.
2. Some employees of the College have mandatory obligations to report knowledge of allegations of sexual harassment to the Title IX Coordinator (see "Officials with Authority" below). In contrast, other employees of the College have confidentiality restrictions on reporting allegations of sexual harassment (see "Confidential Resources" below). Employees who are neither Officials with Authority nor Confidential Resources are encouraged to report allegations of sexual harassment toward another individual covered by this procedure but are not required to do so.

F. Mandatory Reporting by Officials with Authority

1. Certain employees of the College who are designated as "Officials with Authority" are required to immediately report allegations of sexual harassment to the Title IX Coordinator. Officials with Authority are required to report all relevant information known about sexual harassment, including the name of the Respondent, the Complainant, any other witnesses, and the date, time, and location of the alleged incident.
2. UCC has designated the following employees as Officials with Authority:
 - a. Vice President
 - b. Chief Student Success Officer
 - c. Dean of Instruction: Social, Health, & Behavioral Sciences
 - d. Dean of Instruction: General Education & Transfer
 - e. Dean of Instruction: Career & Technical Training
 - f. Executive Director of Human Resources

- g. Chief of Security
- h. Athletic Director
- i. Assistant Athletic Director
- j. Director of Housing

G. UCC Confidential Resources

1. “Confidential Resources” are persons who are not obligated to share any personally identifying information about a report of sexual harassment (such as the survivor or accused's name) with law enforcement, the Title IX Coordinator, or any other UCC administrator.
2. The following individuals who are employed by or affiliated with UCC are designated as Confidential Resources and names and email addresses are located on the UCC website:

Mental Health Counselor
541-440-7896

Peace at Home C.A.R.E. Advocate
UCC Campus Outreach
541-440-7866

H. Title IX Coordinator’s Initial Assessment

1. Health and Safety Risks
 - a. A report of sexual harassment to the Title IX Coordinator does not result in a full investigation unless a Formal Complaint is filed under the process discussed below. However, upon receiving a report of sexual harassment, the Title IX Coordinator will make an initial assessment of the Complainant's health and safety and determine if there is a safety risk to the campus community.
 - b. If the Title IX Coordinator finds there is a continued risk to the campus community, the Title IX Coordinator may file a Formal Complaint without the Complainant's consent or cooperation.
 - c. Additionally, based on the initial assessment or at any time thereafter, the College may order “emergency removal” of a non-employee Respondent, or place an employee Respondent on “administrative leave” as discussed more fully below.

I. Emergency Removal of a Non-Employee Respondent

1. UCC may remove a non-employee Respondent from an education program or activity on an emergency basis after the Title IX Coordinator (or other designated

official) conducts an individualized safety and risk analysis arising from the allegations of sexual harassment. There must be an immediate threat to the physical health or safety of any student or other individual on campus to justify removal. The College may not use an emergency removal to address generalized concerns of the Respondent obstructing a sexual harassment investigation or destroying relevant evidence.

2. If it is determined that emergency removal is appropriate, the Respondent will be provided with a notice and opportunity to attend a meeting with the Title IX Coordinator (or other person making the determination) for the purpose of challenging the removal. The person making the determination must consider the information provided by the Respondent before making a final decision upholding the emergency removal.

J. Administrative Leave

1. The College may place an employee Respondent on administrative leave during the pendency of a Formal Complaint process described below. UCC will follow any relevant policies, procedures, collective bargaining agreements, or applicable laws in placing an employee on administrative leave. Although this section is not intended to apply to student employees who are Respondents, Title IX does not prohibit a student employee from being placed on administrative leave if the College determines that it is appropriate based on the circumstances of the particular case.

K. Title IX Coordinator's Initial Response

1. Upon receiving a report of Sexual Harassment, the Title IX Coordinator will meet with the Complainant to conduct an initial assessment of the reported conduct to determine the most appropriate College response.
2. The Title IX Coordinator will discuss possible supportive measures with the Complainant. In doing so, the Title IX Coordinator shall:
 - a. Consider the Complainant's wishes with respect to supportive measures;
 - b. Inform the Complainant of supportive measures that can be taken with or without the filing of a Formal Complaint; and
 - c. Explain the process for filing a Formal Complaint.
3. "Supportive measures" means individualized services reasonably available to a Complainant or Respondent, free of charge, that are non-punitive, non-disciplinary, and not unreasonably burdensome to the other Party. Supportive measures must be designed to ensure equal educational access and may also be designed to protect safety and deter sexual harassment. Supportive measures may include:

- a. Counseling
 - b. Course-related adjustments such as extending deadlines
 - c. Modifications of work or class schedules
 - d. Campus escort services
 - e. Changes in work or housing locations
 - f. Increased security and monitoring of certain areas of campus
 - g. Mutual restrictions on contact between the Parties
 - h. Leaves of absence
4. Supportive measures may be offered to the Complainant or the Respondent at any time before or after a Formal Complaint is filed.

L. Criminal Investigations by Law Enforcement

1. If there are parallel criminal and Title IX investigations, UCC will cooperate with the external law enforcement agency and will coordinate to ensure that the Title IX process does not hinder legal process or proceedings.

M. Clery Act Reporting of Sexual Harassment

1. UCC will document reports of sexual harassment in compliance with the Clery Act, a federal law requiring data collection of crime within the campus geography. Under the Clery Act, the College does not document personal information, and only reports the type of conduct, and the time, date, and location of the conduct.

N. Formal Complaint Process - Notice to Parties

1. Upon receipt of a Formal Complaint, the Title IX Coordinator will provide written notice to the Parties of the following:
 - a. An explanation of the Title IX grievance process;
 - b. A statement of the allegations of sexual harassment with sufficient details known at the time, and with sufficient time for the Respondent to prepare a response before any initial interview;
 - c. A statement that the Respondent is presumed to not be responsible for the alleged sexual harassment unless and until a determination of responsibility is made at the conclusion of the Title IX grievance process;
 - d. A statement that each of the Parties may have an Advisor of their choice, who may be, but is not required to be, an attorney;

- e. A statement that the Parties may inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint.
 - f. A statement informing the Parties of any provision in the College's code of conduct or employment policies that prohibits knowingly making false statements or knowingly submitting false information during the grievance process (including the investigation stage).
2. If, in the course of an investigation, a determination is made to investigate allegations about the Complainant or Respondent that are not included in the notice provided above, the Title IX Coordinator will provide a supplemental written notice to the Parties regarding the additional allegations.

O. Dismissal of Formal Complaint

1. UCC must dismiss a Formal Complaint for lack of jurisdiction under Title IX if it determines at any stage of the process that any of the following circumstances exist:
- a. The conduct alleged in the formal complaint would not constitute Title IX sexual harassment as defined in this procedure;
 - b. The conduct alleged did not occur in a UCC "education program or activity," as defined under "Jurisdictional Requirements" discussed above; or
 - c. The conduct alleged did not occur against a person in the United States.
2. UCC has discretion to dismiss a Formal Complaint or any allegation under the following circumstances:
- a. At any time during the investigation or hearing, the Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegation;
 - b. The Respondent is no longer enrolled or employed by the UCC; or
 - c. There are specific circumstances that prevent UCC from gathering evidence sufficient to reach a determination regarding responsibility as to the Formal Complaint or allegation.
3. If UCC dismisses the formal complaint or any allegations, the Title IX Coordinator shall provide the Parties simultaneously with written notice of the dismissal and the reason for the dismissal. The Parties must also be notified of the right to appeal the determination (see procedures and grounds for appeals below). After dismissing a Formal Complaint under this procedure, UCC may commence or continue an investigation or other grievance or disciplinary process under any

other applicable UCC policy or procedure.

P. Consolidation of Formal Complaints

1. UCC has discretion to consolidate Formal Complaints if the allegations of sexual harassment arise out of the same facts or circumstances. For example, this would include complaints filed by a single Complainant against more than one Respondent, or complaints filed by multiple Complainants against the same Respondent(s).

Q. Equitable Treatment of the Parties and Presumption of Non-Responsibility

1. A determination of responsibility for sexual harassment under this procedure is a neutral, fact-finding process. UCC will treat Complainants and Respondents equitably, and the Formal Complaint and grievance process procedures will apply equally to both Parties. This means that there is a presumption that all reports of sexual harassment are made in good faith, and a presumption that the Respondent is not responsible for the alleged sexual harassment unless there is a determination of responsibility at the conclusion of the grievance process. UCC will not discipline a Respondent prior to a final determination of responsibility, including completion of an appeal of the determination under this administrative procedure.

R. Bias or Conflict of Interest

1. UCC shall insure that none of the Title IX personnel participating in the Title IX process under this administrative procedure has any basis for bias, or a conflict of interest, for or against the Complainant or Respondent. This includes:
 - a. The Title IX Coordinator,
 - b. An investigator,
 - c. A Decision-Maker, or
 - d. Any person designated to facilitate an informal resolution process.
2. "Bias," as used in this section means a specific, articulable basis for a participant being prejudiced in favor of or against any Party, or a Party's position. "Bias" does not mean a generalized concern about a participant's personal or professional background or beliefs.

S. Applicable Training

1. UCC will ensure that Title IX personnel receive training applicable to their roles in the Formal Complaint Process including, at a minimum, training regarding:
 - a. The definition of sexual harassment under Title IX;

- b. The scope of the College's "education program or activity," such as the extent to which it includes incidents that occur off-campus;
 - c. How to investigate sexual harassment allegations fairly and objectively, and for investigators, how to prepare an investigative report that fairly summarizes the relevant evidence and complies with this administrative procedure;
 - d. How to conduct a grievance process (including investigations, hearings, appeals, and informal resolution processes, as applicable);
 - e. How to use technology at live hearings, for decision-makers;
 - f. Issues of relevance, for investigators and Decision-Makers.
 - g. Decision-Makers should be trained regarding the application of "rape shield" protections for Complainants; for example, questions and evidence about a complainant's prior sexual behavior are irrelevant unless offered to prove that someone other than the respondent committed the alleged misconduct, or offered to prove consent; and
 - h. How to serve impartially, including avoiding prejudgment of the facts at issue, conflicts of interest, and bias.
2. Any materials used to train the Title IX personnel will not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment. UCC will make the training materials publicly available on its website.

T. Timeline for Completion

1. UCC will undertake its grievance process promptly and complete it as swiftly as possible while still complying with all of the requirements of this administrative procedure. The Title IX personnel should complete the investigation and a determination regarding responsibility (and the informal resolution process, if applicable) within 180 calendar days from the time that the alleged sexual harassment is reported to the Title IX Coordinator, unless a notice of extension is provided as discussed below.
2. When appropriate, the Title IX Coordinator (or designated alternate) may determine that good cause exists to extend the 180 period (for example, as needed to conduct a fair and complete investigation, to accommodate an investigation by law enforcement, to accommodate the unavailability of witnesses or delays by the Parties, to account for academic breaks or vacations, or due to the complexity of the investigation). UCC will provide written notice of the extension simultaneously to the Complainant and Respondent and include the reason for the delay and anticipated timing of completion.

3. A Party may request an extension of the timelines under this Administrative Procedure by submitting the request in writing to the Title IX Coordinator and explaining the reason for the delay and the length of the continuance requested. The Title IX Coordinator will notify the Parties and document the grant or denial of a request for extension or delay as part of the case recordkeeping.

U. Role of the Advisor

1. The Parties are entitled to have the assistance of an Advisor of their choosing throughout the Title IX grievance process, including during an investigation interview, reviewing an investigation report, or inspecting evidence gathered in the investigation.
2. The role of the Advisor during an investigation is to provide support and assistance in understanding and navigating the investigation process. The Advisor may not testify in or obstruct an interview or disrupt the process. The Title IX Coordinator and Decision-Maker have the right to determine what constitutes appropriate behavior of an Advisor and take reasonable steps to ensure compliance with this procedure.
3. At the hearing, a Party does not have a right to self-representation, and an Advisor must conduct any cross-examination of the other Party or witnesses. UCC is required to select and provide an Advisor, free of charge, to any Party who does not have an Advisor, including if the Advisor chosen by a Party fails to appear at the hearing. Each Party is limited to one Advisor at the hearing, in order to limit the number of individuals who will have access to confidential information about the issues.

V. Confidentiality and Non-Disclosure Agreements Regarding Evidence

1. UCC must keep confidential the identity of complainants, respondents, and witnesses, except as may be permitted by FERPA, as required by law, or as necessary to carry out a Title IX proceeding. Additionally, to protect the privacy of those involved, the Parties and Advisors may be required to sign a non-disclosure agreement, consistent with applicable law, prior to attending an investigation interview or otherwise participating in the College's grievance process.
2. A "non-disclosure agreement" restricts the Parties and their Advisors from disseminating evidence obtained in the Title IX process by providing that it can only be reviewed or used for purposes of the Title IX grievance process. However, the non-disclosure agreement will not restrict the ability of either Party to discuss the allegations under investigation. Title IX requirements are not intended to restrict the rights of Complainants or Respondents that are protected under the U.S. Constitution, including the First Amendment.

W. Safeguards for Privileged Information

1. UCC's Formal Complaint procedure does not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege (e.g., attorney-client privilege, doctor-patient privilege, spousal privilege, etc.), unless the person holding the privilege provides voluntary, written consent to waive the privilege.

X. Commencing an Investigation and Selecting an Investigator

1. The filing of a Formal Complaint will result in initiating an investigation. The Title IX Coordinator is responsible to oversee investigations to ensure timely resolution and compliance with Title IX and this procedure. Any individual serving as an investigator under this administrative procedure must have adequate training, as set forth under "Applicable Training" above.

Y. Obtaining Evidence During the Investigation

1. UCC, not the Parties, has the responsibility to gather information regarding the allegations of sexual harassment, including the interviewing of witnesses. However, as stated above, UCC will not restrict the ability of any Party to discuss the allegations under investigation, or to gather and present relevant evidence.

Z. Notice of Investigative Interview

1. UCC will provide written notice of the date, time, location, participants, and purpose of all investigative interviews to any Party whose participation is invited or expected, with sufficient time for the Party to prepare to participate.

AA. Evidence Review

1. All Parties will have an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint. This includes evidence upon which UCC does not intend to rely in reaching a determination regarding responsibility, as well as all inculpatory or exculpatory evidence whether obtained from a Party or other source.
2. Prior to the investigator preparing an investigative report, UCC will send to each Party and the Party's Advisor, in electronic format or hard copy, the evidence subject to inspection and review. The Parties will have at least ten business days to submit a written response. The investigator must consider this written response prior to completing the investigative report.

BB. Investigative Report

1. The results of the investigation will be set forth in a written report by the investigator that fairly summarizes the relevant evidence, and should include the following information:
 - a. A description of the circumstances giving rise to the Formal Complaint;

- b. A description of the procedural steps taken during the investigation, including all individuals contacted and interviewed;
 - c. A summary of the testimony of each witness the investigator interviewed;
 - d. An analysis of other relevant evidence collected during the investigation, including a list of relevant documents; and
 - e. A table of contents if the report exceeds ten pages.
2. The investigator will not make a determination regarding responsibility because the Decision-Maker must make an independent determination. However, the investigator may, but is not required to, make a recommendation regarding a determination of responsibility. If the investigator makes a recommendation, it should be based on the same burden of proof that will be applied by the Decision-Maker. (See discussion under “Determination of Responsibility” below.)
3. UCC may permit the investigator to redact confidential information from the report that is not directly related to the allegations, and the investigator must redact privileged information unless the privilege has been waived by the Party holding the privilege. The investigator will keep a log of information that is not produced to the Parties, and will only provide this log to the Title IX Coordinator. The Title IX Coordinator will not disclose the log to the Parties but will maintain the log in the Title IX Coordinator’s file, in the event it later becomes relevant.
4. At least ten (10) business days prior to a hearing or other time of determination regarding responsibility, the investigative report will be provided to each Party and their Advisors, if any. The investigative report may be provided in an electronic format or a hard copy, for review and written response. The Parties will have at least ten (10) business days to submit a written response.

CC. Requirement for a Live Hearing

1. After completing an investigation and prior to a determination of responsibility or non-responsibility, the College will hold a live hearing. The purpose of the hearing is to provide the Complainant and Respondent an opportunity to respond to the evidence set forth in the investigation report that will be considered by the Decision-Maker. UCC will provide all Parties written notice of the date, time, location, participants, and purpose of the hearing, with sufficient time for the Parties to prepare to participate.
2. Neither Party may choose to waive the other Party’s right to a live hearing, but the Parties can choose whether to participate in the hearing, and can decline to answer some or all cross-examination questions.
3. During the hearing, both the Complainant and Respondent have a right to an Advisor of their choice. If a Party does not have an Advisor at the time of the

hearing, the College must select and provide an Advisor for that Party free of charge. Advisors should be present for the entire hearing in order to hear all of the evidence that is presented.

DD. Hearing Format

1. UCC shall provide a live hearing with all Parties physically present in the same geographic location or, at UCC's discretion, it may allow any or all Parties, witnesses and other participants to appear at the live hearing virtually, provided the technology enables the participants to see and hear each other in real time. Additionally, at the request of either party, UCC shall provide for the hearing to occur with the Parties located in separate rooms, with technology enabling the Decision-Maker and Parties to simultaneously see and hear each other and the witnesses who are answering questions. UCC will create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the Parties for inspection and review.
2. The information provided to the Parties during the "Evidence Review" (discussed above) shall be available at the hearing for reference and consultation. Only relevant evidence will be admissible during the hearing. "Relevant evidence" means evidence having any reasonable tendency to prove or disprove any disputed fact that is material to the allegations against the Respondent, including the credibility of a Party or a witness.

EE. Decision-Maker

1. The Decision-Maker must be a different person than the other Title IX personnel involved in the case (i.e. the Title IX Coordinator, the investigator, and any person who facilitated an informal resolution process). As stated above, the Decision-Maker must not have any conflict of interest or have a bias for or against the Complainant(s) or Respondent(s).
2. If the Complainant or Respondent objects to the Decision-Maker based on concerns of bias or a conflict of interest, that Party must make the objection in writing at least 5 business days prior to the hearing, unless the Title IX Coordinator determines that the circumstances warrant a shorter time period. The written objection must state the specific basis for the concern of bias or conflict of interest. The Title IX Coordinator shall consider the basis for the objection and may select a different Decision-Maker.
3. The Title IX rules provide that the Decision-Maker:
 - a. Must receive training on the issues listed above under "Applicable Training";
 - b. May ask the Parties and the witnesses questions during the hearing; and

- c. Must objectively evaluate all relevant evidence, both inculpatory and exculpatory, and must independently reach a determination regarding responsibility without giving deference to the investigative report.

FF. Presenting Witnesses

1. The Complainant and Respondent must be provided an equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence. Witnesses, like Parties, are not required to participate in the hearing.

GG. Cross-Examination

1. The Decision-Maker will permit each Party's Advisor to ask the other Party and any witnesses all relevant questions and follow-up questions, including those questions challenging credibility. The Party's Advisor must conduct cross-examination directly, orally, and in real time. A Party may never personally conduct cross-examination.
2. Before a Complainant, Respondent, or witness answers a cross-examination question or other question, the Decision-Maker must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. The Decision-Maker need not provide a lengthy or complicated explanation in support of a relevance determination. If a Party or witness disagrees with a relevance determination, that individual has the choice of either abiding by the Decision-Maker's determination and answering the question or refusing to answer the question.
3. If a Party or witness does not submit to cross-examination at the live hearing, the Decision-Maker may consider any statement of that Party or witness in reaching a determination regarding responsibility. If a Party or witness submits to cross-examination but declines to answer a specific question, the Decision-Maker cannot rely on any statement regarding the issue on which the Party or witness declined to be cross-examined. A Decision-Maker also cannot draw an inference regarding the determination of responsibility based solely on a Party's or witness's absence from the live hearing, or refusal to answer cross-examination or other questions.

HH. Determination of Responsibility

1. The Decision-Maker will issue a written determination regarding responsibility or non-responsibility no later than twenty (20) business days after the date that the hearing ends.
2. When determining responsibility, a Decision-Maker will objectively evaluate all relevant evidence, including both inculpatory and exculpatory evidence. A Decision-Maker may not make credibility determinations based on an individual's status as a Complainant, Respondent, or witness. In evaluating the evidence, the

Decision-Maker will use “preponderance” evidence standard. This means that after considering all the evidence presented, the Decision-Maker will use the preponderance of the evidence standard, or more likely than not, to decide if the Respondent engaged in sexual harassment under Title IX.

3. The Decision-Maker’s written determination must include:
 - a. Identification of the allegations that allegedly constitute Title IX sexual harassment, as defined in AP 3433 and consistent with the Decision-Maker’s training.
 - b. A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including who conducted the investigation and gave notifications to the Parties. The determination will also state when, where, and the date the investigator interviewed the Parties and witnesses, conducted site visits, and the methods used to gather other evidence. The procedural section should also discuss the dates and how the Parties were provided the opportunity to review and inspect evidence and the date of any hearings held and who attended the hearing.
 - c. Findings of fact supporting the determination. In making these findings, the Decision-Maker will focus on analyzing the findings of fact that support the determination of responsibility or non-responsibility.
 - d. Conclusions regarding the application of UCC’s code of conduct to the facts.
 - e. A determination regarding responsibility or non-responsibility for each allegation, and the Decision-Maker’s rationale for the result;
 - f. Any disciplinary sanctions to be imposed on the Respondent.
 - g. Whether UCC will provide the Complainant with remedies, which should be designed to restore or preserve equal access to the UCC’s education program or activity. To protect the Complainant’s privacy rights, the determination need not disclose the nature of the remedies, and the Complainant can then communicate separately with the Title IX Coordinator to discuss what remedies are appropriate.
 - h. UCC’s procedures and permissible bases for the Complainant or Respondent to appeal.
4. The written determination shall be provided to the Parties simultaneously. The determination regarding responsibility becomes final either on the date that the time for filing an appeal expires, or on the date that the Parties are provided with the written determination regarding the appeal if a timely appeal was filed.

II. Disciplinary Sanctions and Remedies

1. The grievance procedures (including investigation, hearing, and any appeal, if applicable) must be completed before any disciplinary sanctions, or any other actions that are not supportive measures, are imposed against a Respondent. If the Decision-Maker determines that the Respondent was responsible for conduct that constitutes sexual harassment under Title IX, UCC will take disciplinary action against the Respondent and any other remedial action it determines to be appropriate under this administrative procedure. The action will be prompt, effective, and commensurate with the severity of the offense.
2. Possible disciplinary sanctions for a student Respondent include written or verbal reprimand, required training or counseling, non-academic probation, suspension, or expulsion. Possible disciplinary sanctions for an employee Respondent include written or verbal reprimand, required training or counseling, demotion, suspension, or discharge.
3. Remedies for the Complainant may include, but are not limited to:
 - a. Providing an escort to ensure that the Complainant can move safely between classes and activities;
 - b. Ensuring that the Complainant and Respondent do not attend the same classes or work in the same work area;
 - c. Providing counseling services or a referral to counseling services;
 - d. Providing medical services or a referral to medical services;
 - e. Providing academic support services, such as tutoring;
 - f. Arranging for a student Complainant to re-take a course or withdraw from a class without penalty, including ensuring that any changes do not adversely affect the Complainant's academic record; and
 - g. Reviewing any disciplinary actions that have been taken against the Complainant to determine whether the sexual harassment may have caused or contributed to the misconduct that resulted in the Complainant's discipline.

JJ. Procedure and Grounds for Appealing a Determination of Responsibility or Dismissal of a Formal Complaint

1. A Complainant or Respondent may appeal either a determination regarding responsibility or non-responsibility, or the dismissal of a Formal Complaint or allegations (see "Dismissal of Formal Complaint" above). A Complainant or Respondent must submit a written appeal to the Title IX Coordinator within ten (10) business days from the date of the notice of determination or dismissal.

2. In the written appeal, the Party must state the grounds for the appeal, and a statement of facts supporting those grounds. The permissible grounds for appeal under this administrative procedure are as follows:
 - a. A procedural irregularity that affected the outcome;
 - b. Newly discovered evidence that was not reasonably available when the decision was made, and that could affect the outcome; or
 - c. The Title IX Coordinator, investigator, or Decision-Maker had a conflict of interest or bias for or against the Complainant(s) or Respondent(s) that affected the outcome.
3. A person who was not previously involved in the grievance process as Title IX personnel will be selected to serve as the Decision-Maker on Appeal. Within five (5) business days after receiving the written appeal, the Decision-Maker on Appeal (or the Title IX Coordinator if no Decision-Maker on Appeal has been appointed) will provide written notice to the Parties of the following:
 - a. That an appeal has been made, and providing a copy of the written appeal; and
 - b. That the non-appealing Party or Parties may submit a written response to the appeal within ten (10) business days.
 - 1) Either Party may seek an extension of the deadlines stated above for submitting or responding to an appeal by submitting a written request to the Title IX Coordinator. The request must be submitted as soon as possible before the deadline, and must explain the need for the extension and the proposed length of the extension. The Decision-Maker on Appeal (or the Title IX Coordinator if no Decision-Maker has been appointed) will respond to the request in writing within three (3) business days and will inform the Parties simultaneously whether an extension is granted.
 - 2) The Decision-Maker on Appeal will issue a written decision on whether to grant or deny the appeal, and the rationale for the decision, within twenty (20) business days after the Decision-Maker on appeal receives the response to the appeal, or the last day to provide a response, whichever occurs first. The written decision will be provided simultaneously to all Parties.

KK. Informal Resolution

1. An informal resolution process may not be offered before a Formal Complaint is filed. If UCC determines that a Formal Complaint is appropriate for informal resolution, it may provide the Parties with the opportunity to participate in an informal resolution process, including mediation, at any time before a determination regarding responsibility has been made. The Title IX Coordinator

will provide the Complainant and Respondent with written notice of the allegations (if this notice has not already been provided) and an explanation of the informal resolution process, including:

- a. The circumstances, such as reaching an agreement for resolution, that may preclude the Parties from resuming a Formal Complaint arising from the same allegations, and
 - b. Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.
2. A Party cannot be required to participate in the informal resolution process, and UCC must obtain both Parties' voluntary and informed written consent to the informal resolution process. At any time prior to agreeing to a resolution, a Party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the Formal Complaint. If the Parties reach an agreement, UCC is not required to complete a full investigation or the grievance process under a Formal Complaint.
 3. The informal resolution process is not available to resolve allegations that an employee sexually harassed a student.

LL. Retaliation Prohibited

1. UCC prohibits any intimidation, threats, coercion, or discrimination against any individual who has made a report or complaint of sexual harassment, testified, assisted, or participated or refused to participate in any manner in a Title IX investigation, proceeding, or hearing.
2. Prohibited retaliation does not include:
 - a. The exercise of rights protected under the First Amendment (e.g. freedom of speech).
 - b. Charging an individual with a code of conduct violation for making a materially false statement in bad faith during the course of a Title IX grievance proceeding does not constitute retaliation; however, a determination that a party made a bad faith false statement cannot be based solely on a determination of responsibility or non-responsibility.
3. Individuals who experience retaliation based on reporting Title IX sexual harassment, or participating in any of the Title IX procedures discussed above, may file a complaint using the Formal Complaint process in this administrative procedure. Complaints alleging retaliation may also be filed under UCC's other applicable grievance and complaint procedures.

MM. Record-Keeping and File Retention

1. As stated above, UCC must keep confidential the identity of Complainants, Respondents, and witnesses, except as may be permitted by FERPA, as required by law, or as necessary to carry out a Title IX proceeding. UCC will document and retain the following records on file for a period of at least seven (7) years after closing the case:
 - a. The original report or complaint;
 - b. Any actions taken in response to the complaint, including supportive measures;
 - c. The investigative report including all evidence gathered and any responses from the Parties;
 - d. The determination of responsibility or non-responsibility;
 - e. The audio or audiovisual recording or transcript from a hearing;
 - f. Records of any disciplinary sanctions imposed on the Respondent;
 - g. Records of any remedies provided to the Complainant;
 - h. Any appeal and the result;
 - i. Any informal resolution and the result; and
 - j. All materials used to train Title IX Coordinators, investigators, Decision-Makers, and any person who facilitates an informal resolution process.
2. UCC will make these documents available to the U.S. Department of Education Office for Civil Rights upon request.

REFERENCES:

- 20 U.S. Code Sections 1681 et seq.;
- 34 Code of Federal Regulations Parts 106.1 et seq.

RESPONSIBILITY:

The Title IX Coordinator in conjunction with the Executive Director of Human Resources is responsible for implementing and updating this procedure.

NEXT REVIEW DATE: 2029-2030

DATE OF ADOPTION: 11/12/2020

DATE(S) OF REVISION: 1/17/2024 by CC; 4/5/2023 by CC; 2/10/2021 by CC

DATE(S) OF PRIOR REVIEW: