

REPORTS AND COMPLAINTS OF SEXUAL HARASSMENT

1. Ongoing Requirements for Institutions

- a. Designate a Title IX Coordinator.
- b. Ensure the Title IX Coordinator, investigators, decision makers, or any person designated by the institution to facilitate informal resolutions receive adequate training to fulfill their roles.
- c. Post any training materials on the institution's website.
- d. Provide notification of the Title IX Coordinator's contact information and Title IX policies on campus and on the institution's website.

2. Informal Complaint or Report

- a. When **allegations of sexual harassment in connection with an education program or activity are reported** to the Title IX coordinator or any other employee who has the authority to institute corrective measures on behalf of the institution (any employee at the Special Schools), but a formal complaint has not been submitted, the **institution must respond promptly** in a manner that is **not clearly unreasonable** in light of the known circumstances.
- b. Initial fact-finding (not a formal investigation) may be necessary to determine whether the alleged matter occurred in connection with an education program or activity and/or constitutes sexual harassment, in addition to determining the necessary facts to offer/provide the requisite supportive measures.
- c. Complainants and respondents **must be treated equitably** by offering supportive measures, with or without the filing of a formal complaint. An **anonymous complaint may convey actual knowledge, triggering** an institution's response obligations (i.e., **provision of supportive measures**).
- d. The **Title IX coordinator must contact** the appropriate party(ies) to discuss/facilitate supportive measures. The **obligation to provide supportive measures remains** whether a formal complaint is filed or not. (See *Supportive Measures Supplement* for additional guidance)

3. Formal Complaint Filed

- a. When a formal complaint is filed by a complainant or signed by the Title IX Coordinator, the institution must formally investigate the allegations. **A complainant cannot file a formal complaint anonymously.**
- b. The **institution has five (5)** working days after receiving the formal complaint to provide written notice of the complaint to the known parties.
- c. The **institution has ten (10)** working days after receiving the formal complaint to determine whether the complaint **must be dismissed**. A complaint **must be dismissed** if the allegations in the complaint, if taken as true, would:
 - 1) Not constitute sexual harassment; or

- 2) Did not occur within an education program or activity.
- d. The **institution may dismiss** a formal complaint or any allegations therein, if **at any time** during the investigation or hearing:
 - 1) **Complainant** notifies Title IX Coordinator in writing that they **would like to withdraw** the formal complaint or any allegations therein;
 - 2) The respondent is no longer an enrolled or employed by, or otherwise affiliated with, the institution (a dismissal for Title IX purposes on these grounds does not prohibit an institution from excluding an unaffiliated individual from campus pursuant to BOR Policy 1:31, or from taking any other appropriate action(s) in accordance with applicable policy); or
 - 3) Specific circumstances prevent the institution from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.
- e. If a complaint is dismissed, the institution has **five (5)** working days to **provide written notice of the dismissal to both parties**.

4. Investigation (See *Investigation Supplement* for additional guidance)

- a. **The burden of gathering evidence** sufficient to reach a determination regarding responsibility **rests on the institution**. As a result, **institutions must investigate** the allegations of a **complaint and complete a written report** summarizing the relevant evidence.
- b. At the same time, **institutions may not** restrict the ability of either party to investigate the complaint, including discussion of the allegations under investigation or the gathering/presenting of relevant evidence.
- c. **All evidence directly related to the allegations** of a complaint that is gathered during the **institution's investigation must be provided to both parties and their advisors**. This includes evidence which the institution does not intend to rely upon in reaching a determination regarding responsibility, as well as inculpatory or exculpatory evidence obtained from parties or another source.
- d. After evidence has been gathered and provided to the parties for review and comment, the **institution must complete a final report**. The institution should consider any comments submitted by the parties or their advisors regarding the evidence obtained during the investigation when assembling the report. Upon completion, the report **must be provided to both parties and their advisors** at least **ten (10)** working days prior to any scheduled hearing or time of determination of responsibility.

5. Informal Resolution

- a. After a formal complaint is filed, the institution may work with the parties to utilize an informal resolution process at any point prior to a determination of responsibility.
 - 1) **Both parties must consent in writing to the informal resolution process**.

- b. The institution **should appoint a person other than the Title IX Coordinator** to oversee the informal resolution process.

6. Hearing and Determination of Responsibility

- a. When a hearing is necessary, institutions will coordinate with the BOR office to retain a trained hearing examiner. Once a hearing is scheduled on a formal complaint, the institution must provide written notice of the hearing at least **fifteen (15)** days prior to the scheduled date.
- b. The **institution must ensure that both parties have an advisor** present for the hearing. The **institution must choose an advisor for any party that does not have one** or has not chosen one for themselves. Advisors chosen by the institution may be, but are not required to be, attorneys.
- c. A hearing examiner shall conduct the hearing in compliance with the applicable BOR policy and South Dakota codified laws and submit a proposed determination of responsibility to the institution president/superintendent, or their designee (who cannot be the Title IX Coordinator).
- d. The president/superintendent/designee must then make a proposed determination. The president/superintendent/designee's **proposed determination may adopt, reject, or modify the hearing examiner's proposal, and must provide a basis for any modification or rejection of the hearing examiner's proposal.**
- e. The president/superintendent/designee **must provide their written proposed determination to the parties and their advisors.** This determination becomes final upon the conclusion of a petition for administrative review to the Executive Director or upon expiration of the period to file a petition for administrative review in which no petition is filed. A final determination may be appealed to circuit court pursuant to SDCL 1-26.
- f. The **Title IX Coordinator must ensure** that any **remedy** required by a final determination is **implemented**.

7. Petition for Administrative Review

- a. Petitions for administrative review of the president/superintendent/designee's proposed determination of responsibility will be conducted by the Executive Director.
- b. If a petition for administrative review is filed with the Executive Director, the institution should ensure the Executive Director is provided with the relevant hearing records for review.

8. Preservation of Records

- a. The institution **must ensure** any report, informal complaint, or formal complaint processed under BOR Policy 1:17 is documented and that retention of such documentation is completed in accordance with BOR Policy 1:17:C.10.