

Title IX Sexual Harassment and Sex Discrimination Procedure

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Title IX Sexual Harassment and Sex Discrimination Procedure

I. INTRODUCTION

A. Notice of Non-Discrimination

“No individual in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” Title IX of the Education Amendments of 1972, and its implementing regulation at 34 C.F.R. Part 106.

B. Statement

Sinclair reaffirms its commitment to supporting an academic, work, and study environment free of discrimination on the basis of sex, including sexual harassment. All students and employees are protected under and subject to the guidelines of this Procedure.

C. Scope

This Procedure applies to the Prohibited Conduct, defined below, that takes place within Sinclair’s educational programs or activities within the United States. For purposes of this Procedure, Sinclair’s “educational programs or activities” include locations, events, or circumstances over which Sinclair exercises substantial control over both the Respondent, as defined below, and the context in which the Prohibited Conduct occurred. For the conduct to fall under this Procedure, the Complainant must be participating in or attempting to participate in the education program or activity of Sinclair at the time the formal complaint is filed.

D. Designation of Title IX Coordinator

Sinclair has designated and authorized specific employees to coordinate its efforts to comply with Title IX. This includes but is not limited to a Title IX Coordinator. For purposes of this Procedure, the term “Title IX Coordinator” includes any Deputy Title IX Coordinator, unless otherwise specified.

The Title IX Coordinator is responsible for overseeing the investigation of complaints under this Procedure, and monitoring/coordinating the response of other campus offices that may respond to complaints of sex-based offenses under this Procedure, including complaints of retaliation for filing a complaint on the basis of this Procedure.

In addition to addressing complaints of Prohibited Conduct by specific individuals under this Procedure, the Title IX Coordinator also facilitates Sinclair’s response to complaints or reports that Sinclair policies or practices discriminate on the basis of sex, gender, gender identity, gender expression, or sexual orientation. The Title IX Coordinator will review such concerns and, using procedures the Title IX Coordinator determines to be appropriate given the circumstances,

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including referral to other employees or offices at Sinclair, work to address the complaint or report and ensure that Sinclair’s policies and practices do not discriminate on the basis of sex.

The contact information for the Title IX Coordinator and Deputy Title IX Coordinator as of the effective date of this Procedure is as follows:

Title IX Coordinator
Deputy Title IX Coordinator
444 West Third Street
Dayton, Ohio 45402
Office Phone: 937-512-2961
Office Fax: 937-512-2777
Email: TitleIX@sinclair.edu

Further information about how to contact these employees and any updates about them or their contact information is posted on Sinclair’s website.

II. PROHIBITED CONDUCT

Conduct prohibited by this Procedure includes: Title IX Sexual Harassment, Discrimination on the basis of sex/gender, and Retaliation (collectively, “Prohibited Conduct”). These are defined below.

A. Title IX Sexual Harassment

1. Threshold Requirements

For reported behavior to qualify as Title IX Sexual Harassment under this Procedure, in addition to meeting the elements of at least one of the six types listed below, it must meet all of the following threshold requirements, as determined by the Title IX Coordinator and as mandated by federal regulations:

- a.** The conduct must have occurred against a person in the United States.
- b.** The conduct must have occurred within Sinclair’s education program or activity. This means that the conduct must have occurred either:
 - i.** at a location, event, or circumstances over which Sinclair exercised substantial control over both the Respondent and the context in which the sexual harassment occurs or,
 - ii.** In relation to a building owned or controlled by a student organization that is officially recognized by Sinclair.
- c.** The Complainant must be participating in or attempting to participate in the education program or activity of at the time the formal complaint is filed.

A Complaint about conduct that does not meet these threshold requirements is subject to dismissal under this Procedure but may be subject to other Sinclair policies and disciplinary procedures.

2. Types of Title IX Sexual Harassment.

There are six types of “Title IX Sexual Harassment” that constitute Prohibited Conduct under this Procedure: (1) *quid pro quo* sexual harassment, (2) unwelcome conduct sexual harassment, (3) sexual assault, (4) dating violence, (5) domestic violence, and (6) stalking on the basis of sex. Each of these are defined more specifically below.

a. Quid Pro Quo Sexual Harassment

“*Quid pro quo* sexual harassment” is conduct on the basis of sex where a Sinclair employee conditions the provision of an aid, benefit, or service of Sinclair on an individual’s participation in unwelcome sexual conduct.

b. Unwelcome Conduct Sexual Harassment

“Unwelcome conduct sexual harassment” is conduct on the basis of sex that is unwelcome and determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient’s education program or activity.

c. Sexual Assault

“Sexual assault” is conduct on the basis of sex that is defined as a forcible or non-forcible sex offense, or attempted forcible or non-forcible sex offense, as classified under the Uniform Crime Reporting system of the FBI. This includes six separate categories, each of which is considered a form of sexual assault:

- i.** “Rape” is the carnal knowledge of a person, without the consent of the Complainant, including instances where the Complainant is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity. Carnal knowledge is defined as the slightest penetration of the sexual organ of the female (vagina) by the sexual organ of the male (penis).
- ii.** “Sodomy” is oral or anal sexual intercourse with another person, without the consent of the Complainant, including instances where the Complainant is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.
- iii.** “Sexual Assault with an Object” is the use of an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the Complainant.

- iv. “Fondling” is the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the Complainant, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.
- v. “Incest” is sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law. In Ohio, Section 3101.01(A) of the Ohio Revised Code provides that individuals nearer of kin than second cousins may not marry.
- vi. “Statutory rape” is sexual intercourse with a person who is under the statutory age of consent. In Ohio, section 2907.02(A)(1)(b) of the Ohio Revised Code provides that no person may have sex with a child under the age of thirteen. Section 2907.04(A) of the Ohio Revised Code provides that no person over the age of eighteen may have sex with a child under the age of sixteen.

d. Dating Violence

“Dating violence” is conduct on the basis of sex that consists of violence committed by a person who is or has been in a romantic or intimate relationship with the Complainant. The existence of such a romantic or intimate relationship is determined by the length of the relationship, the type of relationship, and the frequency of interactions between the individuals involved in the relationship.

e. Domestic Violence

“Domestic violence” is conduct on the basis of sex that consists of a felony or misdemeanor crime of violence committed by:

- i. A current or former spouse or intimate partner of the victim;
- ii. A person with whom the victim shares a child in common;
- iii. A person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
- iv. A person similarly situated to a spouse of the victim under the domestic/family violence laws of the jurisdiction;
- v. Any other person against an adult or youth victim who is protected from that person’s acts under the domestic/family violence laws of the jurisdiction.

f. Stalking

“Stalking” is conduct on the basis of sex that consists of engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person’s safety or the safety of others or suffer substantial emotional distress. For purposes of the definition of Stalking under this Procedure:

- i.** “Course of conduct” means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person’s property.
- ii.** A “reasonable person” means a reasonable person under similar circumstances and with similar identities to the victim.
- iii.** “Substantial emotional distress” means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

B. Sex Discrimination

Sex discrimination is discrimination that occurs when conduct or a Sinclair policy has the purpose or effect of restricting or denying access to opportunities, programs, or resources in relation to sex, gender, gender identity, gender expression, or sexual orientation in a manner that interferes with an individual’s ability to participate in a Sinclair education program or activity. Sex discrimination does not include behavior explicitly permitted by federal regulations, including single-gender housing, athletic participation, chorus participation, and hiring when sex or gender is a bona fide occupational qualification reasonably necessary to the normal operation of Sinclair.

C. Retaliation

Retaliation by Sinclair or any member of the Sinclair community is prohibited. Any member of the Sinclair community who commits retaliation will be subject to prompt and appropriate disciplinary action.

For purposes of this Procedure retaliation means intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured by this Procedure, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any investigation, proceeding, or hearing provided for in this Procedure.

Retaliation also includes intimidation, threats, coercion, or discrimination, in connection with charges against an individual for violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex

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discrimination or sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or this Procedure.

The exercise of rights protected under the First Amendment of the United States Constitution does not constitute retaliation prohibited by this provision.

Complaints alleging retaliation may be filed according to the grievance procedures outlined in below.

D. False Claims

An individual who makes a complaint under this Procedure in good faith, even if it may be erroneous, will not be subject to discipline. However, the use of this Procedure for false, malicious, or frivolous purposes or for making a false claim is prohibited.

Sinclair's decision to charge an individual with making a materially false statement in bad faith in the course of a grievance proceeding under this Procedure does not constitute retaliation, provided that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

III. DEFINITIONS

The following terms are defined for purposes of this Procedure:

- A. Actual Knowledge.** Actual Knowledge is notice of sexual harassment or allegations of sexual harassment provided to Sinclair's Title IX Coordinator, or any Sinclair official who has authority to institute corrective measures on behalf of Sinclair.
- B. Complainant.** An individual who is alleged to be the victim of conduct that could constitute Title IX Sexual Harassment.
- C. Consent.** Clear verbal or non-verbal communication, freely and actively given, that is mutually understood as willingness to participate in a sexual activity and the conditions of the sexual activity. An individual may withdraw consent for further sexual activity at any time with clear communication to the other party. An individual's consent to one sexual activity cannot be seen as consent to other sexual activity. Consent cannot be given by a person who has not reached an age under state law by which they are permitted to consent, by individuals with a developmental or cognitive disability that prevents them from having the capacity to consent, and individuals who are incapacitated. If consent cannot be given by an individual, sexual activity with that individual is considered to be without consent, even if the person appears to have given consent. Silence or failure to resist does not constitute consent. Consent cannot be obtained through force, threat of force, fraud, or coercion. Consent for previous sexual activity between the parties does not constitute consent for future sexual activity.

- D. Formal Complaint.** A document filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment and/or other forms of sexual misconduct against a Respondent and requesting that Sinclair investigate the allegations. Formal Complaints must be filed in order to pursue either an informal resolution process or a formal grievance process.
- E. Incapacitation/Incapacity.** The state of being unconscious, asleep, or under the influence of drugs and/or alcohol to such an extent that the person cannot appreciate the nature or consequences of their actions. Incapacitated individuals cannot give consent. Note that incapacitation/incapacity is not a defense to Title IX Sexual Harassment or other conduct prohibited by Sinclair policies.
- F. Party.** Complainant or Respondent.
- G. Respondent.** An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

IV. COMPLAINTS AND REPORTS

A. General

Students, employees, applicants for admission or employment, contractors, or visitors who think they have experienced Prohibited Conduct as defined in this Procedure may make a complaint to the Title IX Coordinator.

Any person who thinks another person has experienced Prohibited Conduct as defined in this Procedure may make a report to the Title IX Coordinator.

A complaint or report can be made in person, by mail, by telephone, or by electronic mail, using the contact information listed on Sinclair's website. A complaint or report can be made at any time, including during non-business days or hours.

The Title IX Coordinator serves as the recipient of complaints or reports made under this Procedure. Other offices of Sinclair, such as the Office of Human Resources, Office of Student Affairs, and Sinclair Police, may handle certain aspects of Sinclair's response, depending on the nature of the complaint or report.

B. Reporting Sexual Violence to Medical Provider and/or Law Enforcement

Sinclair strongly encourages all individuals to seek assistance from a medical provider and/or law enforcement officer immediately after an incident of sexual violence or relationship violence, whether or not the individual plans to pursue criminal action. This is the best option to ensure preservation of evidence and to begin a timely response by law enforcement and/or Sinclair.

An individual who has experienced sexual violence is encouraged to contact Sinclair police or the law enforcement agency with jurisdiction in the location of the incident. Reporting sexual violence

to law enforcement may not require criminal prosecution; however, it may allow Sinclair to assist and provide additional resources and support. Sinclair Police can be contacted at (937) 512-2700.

C. Reporting

1. Duty to Report

Any Sinclair employee who becomes aware of information that would lead a reasonable person to believe that Prohibited Conduct under this Procedure has occurred must notify the Title IX Coordinator as soon as possible, but in any event, within five (5) working days after becoming aware of the information.

Sinclair recognizes that certain employees may have a legally protected confidential relationship that may prohibit them from disclosing information about conduct that may fall under this Procedure. These employees include licensed counselors, licensed social workers, and other health care providers who have established a client or patient relationship with a student and may also include attorneys for Sinclair. Students will be clearly informed in writing by any Sinclair employee if a confidential client or patient relationship is being established and will have the choice of whether to enter into such a relationship. No Sinclair employee has the authority to establish a confidential relationship with any other Sinclair employee or with any person other than a student who has been specifically informed such a relationship is being established.

An employee with a duty to report must actively provide information in the time and manner deemed necessary and appropriate by Sinclair to conduct the investigation. Failure to cooperate with the investigation process in a timely manner may compromise Sinclair's ability to conduct an investigation and address allegations fully and may result in disciplinary or other action against the employee.

All Sinclair community members, even those who are not obligated to report under this Procedure, are strongly encouraged to report information regarding any incident of Prohibited Conduct to the Title IX Coordinator.

2. Reporting Criminal Conduct

In addition to the duty to report Prohibited Conduct to the Title IX Coordinator, members of the Sinclair community may have a duty under Section 2921.22 of the Ohio Revised Code to report allegations of criminal conduct to law enforcement authorities if they know that a felony has been or is being committed.

Anyone who suspects or has knowledge of criminal activity occurring on Sinclair property located in downtown Dayton should call Sinclair College Police Department at (937) 512-2700. Incidents that occur on Sinclair property not located in downtown Dayton or off campus should be reported to applicable local law enforcement.

3. Anonymous Complaints or Reports

Anonymous complaints or reports in which the Complainant does not wish to disclose his or her name to the Title IX Coordinator or have it disclosed to the Respondent will be accepted. However, Sinclair’s ability to obtain additional information and the ability to investigate or resolve anonymous complaints or reports may be limited. An anonymous complaint or report can be made in the same manner as a complaint or report in which the name of the Complainant is disclosed.

4. Amnesty for Students when drug or alcohol use is involved

Students who complain of or report Prohibited Conduct or participate in investigations where the conduct involved drugs or alcohol will not be subject to disciplinary action by Sinclair for violation of Sinclair’s drug or alcohol related policies, provided that such violation did not place the health or safety of any other person at risk.

V. INVESTIGATION OF FORMAL COMPLAINTS

A. Complaints of Sex Discrimination or Retaliation

Complaints alleging sex discrimination other than Title IX Sexual Harassment or Retaliation are not subject to the investigation and grievance processes in this Procedure. They will be addressed in accordance with other applicable Sinclair policies and procedures. In all cases, Sinclair will strive to ensure a prompt and equitable resolution of complaints of sex discrimination.

B. Investigation Process for Formal Complaints of Title IX Sexual Harassment

1. Starting the Investigation

A party may choose to resolve a Formal Complaint through the investigation process, provided that the Title IX Coordinator has conducted an initial assessment and determined that the jurisdiction and threshold requirements listed above have been met, that Title IX Sexual Harassment may have occurred, and that an investigation is appropriate.

Sinclair may also choose to move forward with a Formal Complaint signed by the Title IX Coordinator.

The investigation process will begin with the Title IX Coordinator appointing one or more investigators. An investigator will begin the full investigation promptly, and will conduct the full investigation in a manner that is complete, thorough and impartial.

2. Notice to Parties

Sinclair will provide to all known parties written notice of:

- a.** Sinclair’s grievance process;

- b. Whether there is an opportunity to engage in informal resolution;
- c. The allegations of sexual harassment, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview (“sufficient details” include the identities of the parties involved in the incident, if known, the conduct allegedly constituting Title IX Sexual Harassment as defined by this Procedure, and the date and location of the alleged incident, if known);
- d. The presumption that the Respondent is not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process;
- e. The parties’ right to have an advisor of their choice, who may be an attorney;
- f. Information regarding any provision in Sinclair’s Codes of Conduct that prohibits making a materially false statement in bad faith in the course of a Title IX grievance proceeding;
- g. The parties’ right to inspect and review evidence; and
- h. The date, time, location, participants, and purpose of all hearings, investigative interviews or other meetings, with sufficient time for the party to prepare to participate.

3. Timing of Notice

A written notice containing the items set forth above must be provided to the Complainant and the Respondent before any initial interview with the Respondent occurs. The written notice must also give the parties sufficient time for a Respondent to prepare before an initial interview.

If, during the course of the investigation, additional allegations of Title IX Sexual Harassment are reported or otherwise discovered, the parties will receive notice of these additional allegations that were not included in the original notice. The obligation to notify the parties of the Title IX Sexual Harassment allegations being investigated is an ongoing one.

C. Dismissal of Formal Complaint

If, after the initial review of the Formal Complaint by the Title IX Coordinator, it is determined that any of the following conditions exist, Sinclair must dismiss the Formal Complaint from the Grievance Procedures outlined in this Procedure:

- 1. The alleged conduct, if it occurred as alleged, would not constitute Title IX Sexual Harassment;

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2. The alleged conduct, if it occurred as alleged, did not occur in Sinclair's educational programs or activities, or;
3. The alleged conduct, if it occurred as alleged, did not occur against a person in the United States.

Although prior determinations on each of these issues were likely made earlier in the process, additional information may be uncovered during an investigation that requires them to be reconsidered. The Title IX Coordinator is responsible for reconsidering these issues at any point during the processes outlined in this Procedure, which may result in the report of misconduct being dismissed from the Grievance Procedures outlined in this Procedure or being referred for consideration under other applicable Sinclair policies, codes of conduct, or handbooks.

Sinclair may also dismiss a formal complaint or some of its allegations if:

1. A Complainant notifies the Title IX Coordinator in writing that they would like to withdraw the formal complaint or some of its allegations;
2. The Respondent is no longer enrolled as a student or employed by Sinclair, or;
3. Specific circumstances prevent Sinclair from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Sinclair will send written notice of the dismissal and the reasons for dismissal simultaneously to all parties.

Such a dismissal does not prevent Sinclair from proceeding under another Sinclair conduct policy or process.

D. Advisors

Each party has the right to bring an advisor of their choosing to any meetings or discussions relating to the investigation of a Formal Complaint. The advisor may advise the party directly and ask clarifying questions, but may not speak for the party or disrupt the investigation. If a party's advisor refuses to comply with restrictions set by Sinclair the party may be required to use a different Advisor.

This provision applies to all parts of the grievance proceeding except for the live hearing described below. More information about the role of Advisors during the live hearing is set forth below.

E. Timeframes

Sinclair will attempt to complete most investigations within 60 days from the date a formal complaint is filed.

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The timeframe for the overall grievance process will begin on of the date a formal complaint is filed and will conclude with a written determination of responsibility. The determination will typically be issued within 30 days after the issuance of the investigation report.

F. Consolidation of Formal Complaints

Sinclair may consolidate Formal Complaints of allegations of Title IX Sexual Harassment against more than one Respondent or Complainant, or by one party against the other party, where the allegations of sexual harassment rise out of the same facts or circumstances. The same facts and circumstances means that the allegations are so intertwined that they directly relate to all the parties.

G. Interviews and Evidence Gathering

The Title IX Coordinator will conduct an initial assessment of a Formal Complaint and determine whether it is appropriate to offer the parties an opportunity to use the Informal Resolution Process described below or whether to conduct a formal investigation, or both.

If the matter is not resolved through the Informal Resolution Process, the Title IX Coordinator will conduct a prompt and thorough investigation of the alleged discrimination.

During the investigation, the Title IX Coordinator will offer supportive measures to the parties, if and as appropriate. Supportive measures are described below.

During the investigation, all parties and witnesses may be accompanied during interviews by an advisor of their choice.

During the investigation, both the Complainant and Respondent may present statements, witnesses and other evidence to the investigator. The Reporting Person (who may or may not be the Complainant), the Complainant (if not the Reporting Person), the Respondent, and witnesses with relevant information may be interviewed as part of the full investigation. The interviews will be supplemented by the gathering of any physical, documentary, or other evidence, as appropriate and available. Follow-up interviews may be conducted by the investigator as needed. The full investigation is designed to provide a fair and reliable gathering of the facts.

Sinclair will provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.

Sinclair will not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence. A party's communication with a witness or potential witness is considered part of a party's right to meaningfully participate in furthering the party's interests in the case, and not an "interference" with the investigation. However, where a party's conduct toward a witness might constitute "tampering" (for instance, by attempting to alter or prevent a witness's testimony), such conduct also is prohibited as retaliation.

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Sinclair will not access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless Sinclair obtains that party's voluntary, written consent.

The 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 a Formal Complaint, including the evidence upon which Sinclair does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source. Sinclair will not consider or provide for inspection and review evidence which Sinclair knows was illegally or unlawfully created or obtained. Sinclair may impose on the parties and party advisors restrictions or require a non-disclosure agreement not to disseminate any of the evidence subject to inspection and review.

Prior to completion of the investigative report, Sinclair will send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties will have 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report.

All evidence subject to the parties' inspection and review will be available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

H. Investigative Report

The investigator will prepare an investigation report that fairly summarizes relevant evidence. If the report involves multiple Complainants and/or Respondents, Sinclair may issue a single investigative report.

At least 10 days prior to a hearing or other time of determination regarding responsibility, the investigator will send to each party and advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response. If a party disagrees with an investigator's determination about relevance, the party may argue relevance in their written response and/or to the decision-maker at the subsequent hearing.

1. Interim Appeal

If after receiving and reviewing the investigation report a party believes the threshold requirements for Title IX Sexual Harassment were not met, that party may submit a written appeal of the decision to proceed with the case. The appealing party must submit a written appeal to the Title IX Coordinator within 3 calendar days of receiving the investigation report that explains the basis for their appeal. The appeal will be considered by an appropriately trained Sinclair employee designated by the Title IX Coordinator, and an appeal decision will be communicated in writing, to the parties, their advisors, and the Title IX Coordinator within 3 calendar days.

The parties will have 10 calendar days from the date of the appeal decision to submit a written response to the Investigation Report. The written appeal and appeal decision will be included for consideration in the resolution process.

2. Standard of Evidence and Burden of Proof

The standard of evidence for review of Formal Complaints under this Procedure is preponderance of the evidence. “Preponderance of the evidence” is a determination based on facts that are more likely true than not. In the preponderance of the evidence standard, where the evidence in a case is “equal” or “level” or “in equipoise,” the preponderance of the evidence standard results in a finding that the Respondent is not responsible.

The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on Sinclair and not on the parties.

VI. Miscellaneous Provisions

A. Privacy and Confidentiality

Sinclair will conduct all investigations and other activities under this Procedure in a manner which protects the privacy and confidentiality of all participants to the extent permitted by law and applicable Sinclair policies. Privacy and confidentiality have separate and distinct meanings under this Procedure.

1. Privacy

Student education records are protected in compliance with the federal Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, and other applicable federal and state laws.

Access to employee personnel records is governed by Sinclair’s policies and applicable federal and state law.

Sinclair must obtain written consent from a party before Sinclair may receive any health or other treatment records. If a party provides written consent for medical or other treatment records to become part of an investigation’s case file, both parties will be able to review and comment on those records if the investigation moves towards an investigative report and possible hearing.

2. Confidentiality

Information received in connection with the filing, investigation, and resolution of allegations will be treated as confidential except to the extent it is necessary to disclose information in the course of the investigation, for the purposes of addressing conduct or

practices that may violate the Procedure, or when required to do so by law, including but not limited to Ohio's public records laws.

All persons involved in the process should observe the same standard of discretion and respect for the privacy of persons involved in the process.

If the complaint contains sufficiently detailed information about conduct that may constitute a crime, the matter will be reported to Sinclair Police.

Pursuant to the Clery Act (20 U.S.C. § 1092, *et al.*) and the 2013 Amendments to the Violence Against Women Act (42 U.S.C. § 13701 – 14040), the Title IX Coordinator will share anonymous statistical information regarding reported criminal incidents with the Sinclair Department of Public Safety for inclusion in the Daily Crime Log. Sinclair may also share aggregate and non-personally identifiable data about reports, outcomes, and sanctions as permitted or required by law.

B. Supportive Measures

1. Generally

Upon receipt of a report or complaint of sexual harassment, the Title IX Coordinator will contact the Complainant to discuss the availability of supportive measures, whether or not the Complainant wishes to file a formal complaint under this Procedure. Sinclair will determine the necessity and scope of any supportive measures. Even when a Complainant does not specifically request that protective action be taken, Sinclair may choose to impose supportive measures at its discretion to ensure the safety of any individual, the broader Sinclair community, or the integrity of the review process.

“Supportive measures” are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a formal complaint or where no formal complaint has been filed. The Title IX Coordinator is responsible for offering and coordinating the implementation of supportive measures. Such measures are designed to restore or preserve equal access to Sinclair's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or Sinclair's educational environment, or deter sexual harassment.

A student or employee seeking supportive measures should contact the Title IX Coordinator, who will coordinate such requests.

2. Types of Supportive Measures. Supportive measures include but are not limited to:

- a. No Contact Order:** A Complainant or Respondent may request, or Sinclair may impose, communication and contact restrictions to prevent further potentially harmful interaction. These communication and contact restrictions generally

preclude any individual, telephone, electronic or third party communications. Sinclair may also limit an individual's or organization's access to certain Sinclair facilities or activities as part of the no contact order.

- b. Academic or Employment Modifications:** A Complainant or Respondent may request an academic or employment accommodation after a report of sexual misconduct. An individual who requests assistance in changing their academic or employment situation after an incident of sexual misconduct will receive appropriate and reasonably available accommodations.
 - c. Academic accommodations:** Including a change in class schedule, taking an incomplete, dropping a course without penalty, attending a class via electronic, remote, or other alternative means, providing an academic tutor, or extending deadlines for assignments;
 - d. Change:** In work assignment or schedule;
 - e. Escort:** Providing an escort to ensure safe movement between classes and activities.
 - f. Emotional Support:** A limited amount and scope of counseling from licensed personnel may be available to students through Sinclair's Counseling Center. Sinclair will also assist in providing referral to off-campus agencies or providers, as described in the reference section of this Procedure. Such support is available to any member of Sinclair community.
 - g. Temporary Suspension-Restriction (Students)/Administrative Leave (Employees):** When a complaint or report of Prohibited Conduct under this Procedure indicates that there may be an ongoing risk of harm to the safety or well-being of an individual or members of the campus community, Sinclair may place a student or student organization on temporary suspension-restriction or place an employee on administrative leave. Pending resolution of the complaint, the individual or organization may be denied access to campus. When interim suspension or leave is imposed, Sinclair will make reasonable efforts to complete the investigation and resolution within an expedited time frame.
- 3. Failure to abide by restrictions imposed by interim supportive measures:** All individuals are encouraged to report concerns about failure of another individual to abide by any restrictions imposed by an interim supportive measure. Sinclair will take immediate and responsive action to enforce measures previously ordered are implemented by Sinclair.

C. Emergency Removal

If, after receipt of a complaint and an individualized safety and risk assessment, Sinclair determines that an immediate threat to the physical health or safety of any student or other individual arising

from the allegations of sexual harassment justifies removal of a Respondent, Sinclair may remove the Respondent on an emergency basis. Threats must pose more than a generalized, hypothetical, or speculative risk to health and safety for emergency removal to be appropriate

A removed Respondent will receive notice and an opportunity to challenge the decision immediately following the removal. Employees may be placed on administrative leave during the grievance process.

D. Equitable Treatment

Complainants and Respondents are eligible for Supportive Measures as defined within this Procedure. Sinclair will not impose disciplinary sanctions against a Respondent unless a determination of responsibility for Title IX Sexual Harassment has been made against the Respondent.

Sinclair will conduct an objective evaluation of all relevant evidence – including both inculpatory and exculpatory evidence. Sinclair will not require, allow, rely upon, evaluate, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected by a legally recognized privilege (*e.g.*, attorney-client or doctor-patient), unless the person holding such privilege has waived the privilege.

E. Bias/Conflicts of Interest

Any individual designated by Sinclair as a Title IX Coordinator, investigator, decision-maker, or informal resolution process facilitator, must not have a conflict of interest or bias for or against Complainants or Respondents generally, or for or against an individual Complainant or Respondent.

The following will not be considered evidence of bias:

- The Title IX Coordinator’s initiation of a formal complaint, or;
- An individual’s decision that allegations warrant an investigation.
- Use of trauma-informed practices when such practices do not:
 - Rely on sex stereotypes;
 - Apply generalizations to allegations in specific cases;
 - Cause loss of impartiality, and;
 - Prejudge the facts at issue.

Sinclair will apply an objective (reasonable person), common sense approach to evaluating whether a particular person serving in a Title IX role is biased, and will exercise caution not to apply generalizations that might unreasonably conclude that bias exists. An individual’s current job title, professional qualifications, past experience, identity, or sex will not, alone, indicate bias.

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F. Presumptions

There is a presumption that a Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

G. Recordkeeping

Sinclair will create and maintain for a period of at least seven years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, Sinclair will document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to Sinclair's education program or activity. If Sinclair does not provide a Complainant with supportive measures, then Sinclair will document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

VII. HEARING

A. General

When the investigation is concluded, and the parties have had the opportunity to review the evidence and the opportunity to respond in writing to the draft investigation report as described in above, Sinclair will facilitate a live hearing during which each party's advisor will be permitted to ask the other party and any witnesses all relevant questions and follow-up questions, including those questions that challenge credibility.

Hearings will be conducted with all parties physically present in the same geographic location or, at the discretion of Sinclair, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.

Hearing witnesses will only participate in the Hearing when they are answering questions. They will not be permitted to observe or otherwise participate in the Hearing unless they are serving as an Advisor, as outlined below.

Sinclair will create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review.

The person(s) to serve as the decision-maker(s) during the hearing will be as set forth in the Student Code of Conduct when the Respondent is a student, or in the applicable Procedure, or handbook when the Respondent is an employee or other person subject to this Procedure.

The decision-maker will not be the Title IX Coordinator or the individual who investigated the Formal Complaint.

B. Pre-Hearing Conference

Each party will have their own Pre-Hearing Conference with the decision-maker prior to the hearing. The Title IX Coordinator or decision-maker will communicate to the parties and their advisors the date, time, and format for their Pre-Hearing Conference. The decision-maker and the advisor must be in attendance. While the parties are strongly encouraged to attend, they are not required to do so.

During the Pre-Hearing Conference, the advisors must share with the decision-maker their list of witnesses to appear at the hearing, the identity of any requested witnesses that were not questioned during the investigation, the request for any new evidence to be considered that was not submitted previously to the investigators, and the availability of the advisor and the party for hearing dates.

Evidence and witnesses may be presented at the hearing only if they were submitted to the investigators and made available to the parties for review, unless they were unavailable at the time of the investigation or the relevance was unknown until the investigation report was submitted. The decision-maker will address any requests to present new evidence and new witnesses at the Pre-Hearing Conference.

The advisor is strongly encouraged to discuss lines of questioning with the decision-maker at the Pre-Hearing Conference to obtain guidance from the decision-maker on relevancy prior to the hearing. Additionally, the decision-maker will discuss with the advisors and parties the expectations and guidelines for appropriate behavior and decorum during the hearing.

After the conclusion of the Pre-Hearing Conferences, the decision-maker will provide the parties and their advisors with written notice of the date, time, and manner for the hearing, which will typically occur no less than 14 days after the conclusion of the final Pre-Hearing Conference.

C. Advisors at Hearings

If a party wants to question another party or a witness at a hearing, the party must be accompanied by an Advisor. Parties will not be permitted to conduct cross-examination on their own.

Sinclair will not limit the choice or presence of any advisor for a Complainant or Respondent, and the advisor of their choice may be, but is not required to be, an attorney. If a party does not have an Advisor present at the live hearing, Sinclair will provide without fee or charge to that party, an Advisor of Sinclair's choice, who may, but is not required to be, an attorney, to conduct cross-examination on behalf of that party.

At the hearing, 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 challenging credibility. Cross-examination at the hearing will be conducted directly, orally, and in real time by the party's Advisor. All questioning at the hearing must be relevant, respectful, and non-abusive. If a party's Advisor refuses to comply with restrictions set by Sinclair, Sinclair may remove that advisor from the hearing process and require that the party use a different Advisor.

D. Relevance

During the hearing, only relevant cross-examination and other questions may be asked of a party or witness.

The following may be considered irrelevant:

- Repetition of the same question;
- Evidence that is duplicative of other evidence;
- Questions related to information that is protected by a legally recognized privilege;
- Questions related to a party's medical, counseling/psychological, and similar treatment records unless the party has given voluntary, written consent; and
- Questions related to information about the Complainant's sexual predisposition or prior sexual behavior, unless:
 - The information is to offered to prove that someone other than the Respondent committed the alleged Title IX Sexual Harassment, or
 - The information concerns specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

Evidence will not be excluded at the hearing solely because it is unduly prejudicial, concerns prior bad acts, or constitutes character evidence. However, the Decision-Maker may objectively evaluate such evidence by analyzing whether that evidence warrants a high or low level of weight or credibility.

During the hearing, the decision-maker will first determine whether a question is relevant, and explain any decision to exclude a question as not relevant, before a Complainant, Respondent, or witness answers a cross-examination or other question.

Sinclair will not require parties to submit cross-examination questions before they are asked.

Decision-makers are not required to give a lengthy or complicated explanation of a relevancy determination during the hearing. The decision-maker may send to the parties after the hearing any revisions to the decision-maker's explanation that was provided during the hearing.

E. Weighing Credibility

The decision-maker will evaluate all admissible, relevant evidence for weight or credibility. The degree to which any inaccuracy, inconsistency, or implausibility in a narrative provided by a party or witness should affect a determination regarding responsibility is a matter to be decided by the decision-maker, after having the opportunity to ask questions of parties and witnesses, and to

observe how parties and witnesses answer the questions posed by the other party. Corroborating evidence is not required.

Credibility determinations are not based solely on observing demeanor, but also are based on other factors (e.g., specific details, inherent plausibility, internal consistency, corroborative evidence). Cross-examination brings those important factors to a decision-maker's attention.

A party's answers to cross-examination questions can and should be evaluated by a decision-maker in context, including taking into account that a party may experience stress while trying to answer questions. Parties will not be unfairly judged due to inability to recount each specific detail of an incident in sequence, whether such inability is due to trauma, the effects of drugs or alcohol, or simple fallibility of human memory.

F. Decision

The decision-maker 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. The decision-maker has the right and responsibility to ask questions and elicit information from parties and witnesses on the decision-maker's own initiative to aid the decision-maker in obtaining relevant evidence, both inculpatory and exculpatory. The parties will have equal rights to present evidence in front of the decision-maker so the decision-maker has the benefit of perceiving each party's unique perspectives about the evidence.

If a party or witness does not submit to cross-examination at the live hearing, the decision-maker will not rely on any statement (factual assertion to prove or disprove the allegations) of that party or witness in reaching a determination regarding responsibility. The decision-maker will not draw an inference about the determination regarding responsibility based solely on a party's or witness' absence from the live hearing or refusal to answer cross-examination or other questions.

Video evidence showing the conduct alleged within a Formal Complaint may be considered, even if the party performing said conduct does not submit to cross-examination.

In cases where a Respondent's alleged verbal conduct is, itself, the conduct alleged to be Title IX Sexual Harassment, statements regarding the alleged verbal conduct are *not* considered the Respondent's statement for purposes of this section. This is because the verbal conduct at issue does not constitute the making of a factual assertion to prove or disprove the allegations of sexual harassment; instead, the verbal conduct constitutes part or all of the underlying allegations of sexual harassment itself.

For example, where a Complainant alleges that the Respondent said to the Complainant: "If you go on a date with me, I'll give you a higher grade in my class," and at the live hearing, the Respondent does not submit to cross-examination. This Procedure does not preclude the decision-maker from relying on the Complainant's testimony that the Respondent said those words to the Complainant. The words described by the Complainant, allegedly attributed to the Respondent, are themselves the misconduct that constitutes Title IX Sexual Harassment under this Procedure, and are not the Respondent's "statement," i.e., the Respondent's intent to make a factual assertion.

After the hearing, the decision-maker will issue a written determination of responsibility. This determination will include:

1. Identification of the allegations potentially constituting Title IX Sexual Harassment
2. A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
3. Findings of fact supporting the determination;
4. Conclusions regarding the application of the Procedure to the facts;
5. A statement of, and rationale for, the result as to each allegation, including:
 - a. A determination regarding responsibility,
 - b. Any disciplinary sanctions Sinclair imposes on the Respondent,
 - c. Whether remedies will be provided by Sinclair to the Complainant; and
6. The procedures and permissible bases for the Complainant and Respondent to appeal.

The determination will lay out the evidentiary basis for conclusions reached in the case. The nature of remedies, if any, will not be included within the determination. The determination will be provided to the parties simultaneously.

The determination regarding responsibility becomes final, either on the date that the recipient provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

G. Sanctions and Remedies

Once a final outcome has been reached regarding a case under this Procedure, the any relevant sanctions or remedies will be determined by the applicable Sinclair administrator, based on the status of the Respondent, e.g. whether a student, tenured or tenure track faculty, other employee, or contractor.

A range of reasonable sanctions may be imposed, including, but not limited to:

1. Continuing “no contact” orders;
2. Trespass order prohibiting presence on campus, at Sinclair-owned facilities, and/or at campus activities or events;
3. Fines;
4. Required counseling;
5. Alcohol/drug assessment;
6. Restitution/Restoration, where property has been damaged/stolen or funds have been misappropriated;
7. Campus Restriction on behavior, access to certain campus facilities, participation in campus activities, housing restrictions, and/or scheduling restrictions;
8. Written apology;

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9. Community Service;
10. Training or Professional Development;
11. Suspension of student;
12. Expulsion of student;
13. Written warning of employee;
14. Suspension of employee, with or without pay;
15. Termination of employment;
16. Prohibiting contractor or contractor's employee from being on campus;
17. Cancellation of third-party contract.

More than one sanction may be imposed for any single violation.

A Respondent's prior disciplinary record may be taken into consideration in imposing sanctions.

Any sanction imposed will be in effect at all campuses, all property owned or controlled by Sinclair, and at all events or functions sponsored by or under the supervision of Sinclair, unless otherwise provided in the written decision.

When a determination of responsibility for Title IX Sexual Harassment has been made, Sinclair will provide remedies to the Complainant designed to restore or preserve equal access to Sinclair's education program or activity. Such remedies may include the same individualized services provided as supportive measures; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent after a determination of responsibility for Title IX Sexual Harassment has been made.

The Title IX Coordinator is responsible for effective implementation of remedies. Where the final determination has indicated that remedies will be provided, the Complainant can then communicate separately with the Title IX Coordinator or their designee to discuss what remedies are appropriately designed to preserve or restore the Complainant's equal access to education. Remedies for a Complainant that do not affect the Respondent must not be disclosed to the Respondent.

H. Appeals

Either party may, within ten (10) business days, appeal the decision-maker's determination regarding responsibility, or Sinclair's dismissal of a formal complaint or any allegations therein. Sinclair will notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties. Both parties will have a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome. The decision-maker for the appeal will issue a written decision describing the result of the appeal and the rationale for the result and provide the written decision simultaneously to both parties.

Grounds for appeal include:

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;
3. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter; All grounds for appeal will be available to all parties.

The decision-maker for the appeal will be as set forth in the Student Code of Conduct when the Respondent is a student, or in the applicable Procedure or handbook when the Respondent is an employee or other person subject to this Procedure. The decision-maker for the appeal will not be the same person as the decision-maker that reached the determination regarding responsibility or dismissal, the investigator, or the Title IX Coordinator.

The decision-maker for the appeal will issue a written decision describing the result of the appeal and the rationale for the result and provide the written decision simultaneously to both parties within ten (10) business days of the date the non-appealing party's written response to the appeal is received.

VIII. INFORMAL RESOLUTION PROCESS

Sinclair's Informal Resolution process involves informal consultation to find an acceptable resolution for both parties without invoking the full investigation and adjudication process described below.

The Informal Process Facilitator will be designated by the Title IX Coordinator and may be the Title IX Coordinator.

Sinclair will not offer or facilitate an informal resolution process to resolve allegations that an employee engaged in Title IX Sexual Harassment of a student.

The informal process may include any of the following:

1. Counseling the Complainant on ways to address the Respondent directly regarding their behavior if the Complainant is comfortable doing so,
2. Counseling of the Respondent by the Title IX Coordinator on changing their behavior,
3. Facilitated discussion between the Complainant and Respondent,
4. Mediated agreement between the Complainant and Respondent, or
5. Any other informal process that is appropriate under the circumstances.

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The informal resolution process is voluntary. Sinclair will not require that a Complainant or Respondent participate in informal resolution and waive the right to a full investigation and adjudication of formal complaints of Title IX Sexual Harassment in order to enroll or continue to be enrolled, or be employed or continue to be employed, or enjoy any other right granted by Sinclair. The parties may voluntarily choose to pursue the informal resolution process at any time prior to reaching a determination regarding responsibility. The parties may choose to pursue a formal resolution at any time prior to agreeing to a resolution.

Sinclair will take the following steps prior to facilitating an informal resolution:

- Providing written notice to the parties of:
 - the allegations,
 - the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint, and
 - any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;
- Obtaining the parties' voluntary, written consent to the informal resolution process.

The Complainant and Respondent are permitted to bring an advisor of their choosing to any discussions as part of the informal resolution process. An advisor may offer their assistance to the Complainant or Respondent, but may not speak for them during the process.

IX. PREVENTION, EDUCATION, AND TRAINING

Sinclair will provide training on Title IX Sexual Harassment and other Prohibited Conduct, for trustees, employees, and students.

The Title IX Coordinator, investigators, decision-makers, and persons who facilitate an informal resolution process will receive training on the definition of sexual harassment, the scope of Sinclair's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. This includes how to apply the definitions with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with this Procedure. They will also receive annual training on issues related to dating violence, domestic violence, sexual assault, and stalking and on how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability.

Investigators will receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.

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Decision-makers will receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant.

Any materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.

Training materials for training under this section will be made publicly available through Sinclair's website. Published training materials will be up-to-date and reflect the latest training provided.