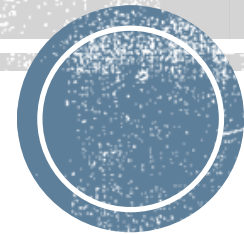




**COLORADO**  
COMMUNITY COLLEGE SYSTEM

# CCCS Investigator Training

Understanding the New Title IX Regulations and  
CCCS Board Policy and System Procedure 19-60



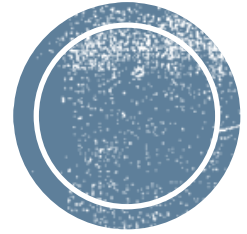
September 30, 2020

Presented by Tashana Taylor, Director of Civil Rights and Investigations

# AGENDA:

- **Civil Rights & Sexual Misconduct within CCCS**
  - Overview of Applicable Laws
- **Brief Overview: New Title IX Regulations (effective August 2020)**
- **CCCS Board Policies & System Procedures**
- **Roles and Responsibilities**
- **Resolution Process**
  - Preliminary Steps, Timeline, Interim Actions, and Rights of Involved Parties
  - Informal Resolutions
  - Formal Investigation - Title IX Cases
  - Formal Investigation - Other Sexual Misconduct and Civil Rights cases





# **Civil Rights and Sexual Misconduct within CCCS**

Applicable Laws and Our Commitment to Civil Rights

❖ Each of the 13 Colleges and the System office have a designated Title IX and EO Coordinator to address civil rights concerns raised by students and employees (including on and off campus incidents).

❖ Students and employees should utilize the process at their institution to have civil rights concerns addressed.

❖ The System office provides support to the Colleges and the Colleges also provide great support to one another.



# Title IX/EO Coordinator

ADA, Title VI, and Title VII Coordinator (Equal Opportunity Coordinator) and Title IX Coordinator:

- *Person designated at each College and the System Office to oversee all civil rights, including sexual misconduct, complaints. A Deputy Title IX and EO Coordinator may also be designated to act on behalf of the Coordinator.*



# What is ADA?

- The Americans with Disabilities Act (ADA) is a civil rights law that prohibits discrimination and guarantees that people with disabilities have the same opportunities as everyone else to enjoy employment opportunities, to purchase goods and services, and to participate in State and local government programs and services. It was signed into law in 1990 and was modeled after the Civil Rights Act of 1964.
- To be protected by the ADA, a person must have a disability, which is defined by the ADA as a physical or mental impairment that substantially limits one or more major life activities, have a history or record of such impairment, or be perceived by others as having such an impairment.



# What IS Title VI?

## Title VI of the Civil Rights Act of 1964

- Title VI of the Civil Rights Act is a federal civil rights law that prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance.





# What is title VII?

## Title VII of the Civil Rights Act of 1964

- Title VII of the Civil Rights Act is a federal civil rights law that prohibits employers from discriminating against employees on the basis of sex, race, color, national origin, and religion.





# What is Title IX?

**Title IX 20 U.S.C. § 1681 & 34 C.F.R. Part 106 (1972)**

- Title IX is a federal civil rights law passed as part of the Education Amendments of 1972. The law protects people from discrimination based on sex in education programs or activities that receive Federal financial assistance. Title IX applies to all education institutions, both public and private, that receive federal funds.
- Title IX states that:
- *“No person 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 educational program or activity receiving federal financial assistance.”*



# What's the difference between Title VII & Title IX?

## Title VII

- All employment
- Only employees
- Protected classes: Race, color, religion, sex, national origin
- Statute of Limitations
- Cap on damages

## Title IX

- Only educational programs or activities, including employment
- All students and employees
- Protected class: Sex
- No Statute of Limitations
- No cap on damages

*Title VII applies to only employees. Title IX applies to students or employees.*



# Which Law Applies? Title VII or IX?

- When both the Complainant and the Respondent are employees, authorized volunteers, guests and/or visitors, Title VII applies.
- When the Complainant or Respondent is a student, Title IX applies.



# What is VAWA?

Violence Against Women Act of 1994

- VAWA is a federal law sought to improve criminal justice and community-based responses to dating violence, domestic violence, sexual assault and stalking.



# Our Commitment to Civil Rights

Colorado Community College System is committed to creating an inclusive environment by prohibiting all forms of discrimination and harassment, including sexual misconduct, in its employment practices and educational programs and activities, specifically on the basis of:

1. Sex
2. Gender
3. Race
4. Color
5. Age
6. Creed
7. National or Ethnic Origin
8. Ancestry
9. Physical or Mental Disability
10. Familial Status
11. Veteran or Military Status
12. Pregnancy Status
13. Religion
14. Genetic Information
15. Gender Identity
16. Sexual Orientation





**QUESTIONS?**



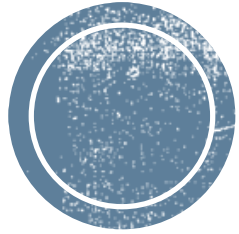
# **New Title IX Regulations**



# Overview

- Schools must offer free supportive measures to all Complainants
  - Supportive measures are individualized services to restore or preserve equal access to education, protect student and employee safety, or deter sexual harassment
- Sexual Harassment includes:
  - Quid Pro Quo;
  - Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school's education program or activity; or
  - Sexual assault, dating violence, domestic violence, or stalking.
- A school must respond when the school has actual knowledge, the conduct occurred within the school's education program or activity, against a person in the United States.
- A school's grievance process must:
  - Give both parties written notice, an equal opportunity to select an advisor, and an equal opportunity to submit and review evidence throughout the investigation.
  - Use trained Title IX personnel to objectively evaluate all relevant evidence without prejudice of the facts and free from conflicts of interest or bias for or against either party.
  - Apply a presumption that the Respondent is not responsible during the grievance process ("presumption of innocence").
  - Ensure that the decision-maker is not the same person as the investigator or Title IX Coordinator.
  - Hold a live hearing and allow cross-examination by advisors.





**QUESTIONS?**



# **CCCCS Policies & Procedures**

**Applicable to the Community Colleges within the Colorado  
Community College System and the System Office.**

# **NEW: Board Policy 19-60**

## **Prohibition of Discrimination, Harassment or Retaliation**

- BP 19-60 states:
  - Individuals affiliated with CCCS shall not discriminate or harass on the basis of sex, gender, race, color, age, creed, national or ethnic origin, ancestry, physical or mental disability, familial status, veteran or military status, pregnancy status, religion, genetic information, gender identity, sexual orientation, or any other protected class, in connection with employment practices or educational programs and activities (including in admissions).
  - Individuals shall not retaliate against any person who opposes discrimination, harassment or retaliation, or participates in any complaint or investigation process.

Applies to all conduct alleged to have occurred on or after August 12, 2020



# **NEW: System Procedure 19-60**

## **Civil Rights and Sexual Misconduct Resolution Process**

- Defines the process by which CCCS shall respond to allegations of discriminatory, harassing, and/or retaliatory behavior, including Sexual Misconduct.
- Appendix A: Provides definitions applicable to the procedure.
- Appendix B: Details Compliance Requirements, such as training requirements and notice/publication of policies and procedures.

Applies to all conduct alleged to have occurred on or after August 12, 2020



# CCCS Jurisdiction

- BP 19-60 and SP 19-60 apply to behaviors that take place on a CCCS campus, at CCCS sponsored events, and may also apply to off-campus and online behavior when the Title IX/EO Coordinator determines that the off-campus or online behavior affects a substantial CCCS interest.
- For Title IX specific cases, the harassing behavior must have occurred in an education program or activity against a person within the United States.





# **REPEALED: Board Policies and System President's Procedures** (Conduct prior to 8/12/20)

- **BP 3-120 and BP 4-120**

- Provide that individuals affiliated with the System or Colleges shall not be subjected to unlawful discrimination and/or harassment on the basis of protected class or perceived protected class.

- **SP 3-50b and SP 4-31a**

- Civil Rights Grievance and Investigation Process

- Defines the process by which the System and Colleges shall respond to allegations of civil rights violations.

- **SP 3-120a and SP 4-120a**

- Sexual Misconduct Procedure

Provides definitions and expands on the process by which the System and Colleges shall respond to allegations of sexual misconduct.







**QUESTIONS?**



# **Roles and Responsibilities**



## Title IX/EO Coordinator

Person designated at each College and the System Office to oversee all civil rights, including sexual misconduct, complaints. A Deputy Title IX and EO Coordinator may also be designated to act on behalf of the Coordinator.

## Investigator

Person charged to investigate the civil rights grievance by the Title IX/EO Coordinator.



# Appellate Officer

Person designated by the Title IX/EO Coordinator to review the appeal if a party appeals.

# Disciplinary Authority

Person charged with determining a sanction/responsive action if the Respondent is found responsible for violating policies and procedures.



# TITLE IX/EO COORDINATOR ROLE

- Point person for campus complaints
- Oversight and coordination of prompt and equitable grievance procedures
- Supervisor of investigations
  - Title IX requires investigations to be adequate, prompt, reliable, impartial, thorough, objective, and independent
- Trainer and/or convener of training for students, employees, investigators, and appellate officers
- Contact for government inquiries, including CCRD and EEOC
- Interaction with OCR investigations
- Ensure College's website includes name and contact information for Title IX/EO Coordinator



# Investigator Role – Neutral Fact-finder

- Disclose all conflicts of interest to the Title IX/EO Coordinator
- Remain neutral throughout the fact gathering stage
- Treat all parties and witnesses with respect
- Be as transparent as possible
- Do not make promises (timelines, confidentiality, etc.)
- Complete the fact gathering stage
- Write Investigation Report





**QUESTIONS?**





# **Resolution Process**

**Designed to address reported concerns, end inappropriate behavior,  
and prevent its reoccurrence.**

# Preliminary Steps

- Upon receipt of a complaint, the Title IX/EO Coordinator will review the complaint to determine whether the complaint alleges sufficient information to support that a civil rights violation has occurred.
- If the Title IX/EO Coordinator is unable to make this determination in reviewing the complaint alone, the Title IX/EO Coordinator may, at their discretion, reach out to the Complainant or others, as relevant, for clarification and/or additional information.



# Preliminary Steps cont.

- If there is no reasonable cause found to initiate a formal investigation, the Title IX/EO Coordinator shall notify the Complainant and discuss other options for addressing the reported concerns.
- If there is reasonable cause and the Complainant wishes to proceed, the Title IX/EO Coordinator will initiate an informal resolution or a formal investigation.
  - If the Complainant does not wish to proceed, the Title IX/EO Coordinator reserves the right to initiate an informal or formal, and will consider relevant factors to determine necessary next steps.



# Timeline

- CCCS shall make every effort to complete the resolution or investigation process within approximately 90 days from the date the complaint is filed.
- If the complaint cannot be resolved within 90 days, the Title IX/EO Coordinator may extend the timeline when necessary.
  - Written notice will be provided to the parties notifying them of the extension.



# Interim Actions

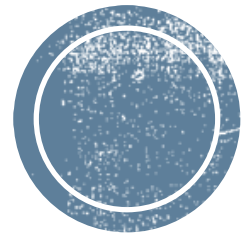
- The Title IX/EO Coordinator may implement interim actions and supportive measures intended to protect the safety and security of the campus community, address the effects of the reported behavior, and prevent further violations, while the complaint is under review or investigation.
  - Examples:
    - Issuing a No Contact Order
    - Placing an employee on administrative leave
    - Campus ban
    - Altering housing/work arrangements
    - Offering adjustments to academic deadlines or course schedules
    - Suspending privileges such as attendance at College activities or participation in College-sponsored organizations



# Rights of Involved Parties

- To be treated with respect by CCCS employees.
- To take advantage of Supportive Measures and other resources, such as counseling, psychological services, and health services.
- To experience a safe living, educational, and work environment.
- To have an advisor of their choice present at any meeting.
- To have access to a Title IX/EO Coordinator, investigator(s), hearing officers/decision-maker(s) for Title IX cases, and/or other individuals assisting with the resolution process who do not have a conflict of interest or bias for or against either party.
- To receive amnesty for minor student misconduct (such as alcohol or drug violations) that is ancillary to the incident.
- To be free from retaliation.
- To be informed of the outcome/resolution of the complaint, and the sanctions and rationale for the outcome where permissible.
- To have assistance in contacting law enforcement, if desired.
- To request housing, employment, and/or educational modifications, as deemed appropriate and reasonable.
- To request no further contact with the opposite party, as deemed appropriate, allowable and reasonable.





# **Informal Resolutions**





## The Title IX/EO Coordinator, in consultation with the parties, may determine that an informal resolution is appropriate to resolve the reported concerns.

- Notice of the allegations and specific Informal Resolution process will be provided to both parties.
- Informal resolutions do not involve a written investigation report or an opportunity to appeal.
- Informal resolutions are not available in Sexual Harassment cases involving a student Complainant and an employee Respondent.
- At any time during the informal resolution process, the Title IX/EO Coordinator and/or parties may elect to cease the informal resolution process and proceed with a formal investigation.
- Informal resolutions may include:
  - Interim or long-term remedial measures
  - Referral to other resolution processes
  - Training or educational programming for the parties
  - The Title IX/EO Coordinator or a designee serving as a facilitator to discuss the reported concerns with the Complainant and Respondent (either separately or together) and to identify possible resolutions and/or appropriate future conduct
  - Referral to a Disciplinary Authority to further address the reported behavior, as deemed appropriate





# Formal Investigations

# Steps for all Investigations

- Title IX/EO Coordinator will assign investigators.
- Title IX/EO Coordinator will provide the Notice of Investigation to the Complainant and Respondent.
- Investigators will conduct interviews of parties and witnesses, as deemed relevant by the Investigators.
- Throughout the investigation, the Title IX/EO Coordinator will provide regular written updates on the status of the investigation the parties.
- Following the fact gathering stage, the investigator(s) shall issue a Preliminary Investigation Report to the parties for review.
  - Includes relevant facts as gathered by the investigators, but does not include findings, analysis, or conclusion.
  - Parties have 10 calendar days to review and respond with any changes, clarifications, or questions.
  - Parties may review, upon request, all evidence collected as part of the investigation, whether or not it will be relied upon in reaching a determination.



# Final Investigation Report

- At the conclusion of the fact gathering stage and formal investigation, including any relevant information submitted in response to the Preliminary Investigation Report, the investigator(s) shall issue a Final Investigation Report to the Title IX/EO Coordinator.
  - Report should detail the factual findings and summarize the relevant evidence.
  - Report will not contain any determinations as to whether the conduct is in violation of applicable policies.

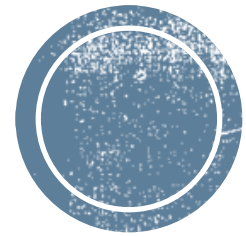


# Final Investigation Report cont.

- Upon receipt of the Final Investigation Report, the Title IX/EO Coordinator shall proceed as follows:
  - For cases involving Sexual Harassment within the United States, the Title IX/EO Coordinator shall initiate a live hearing.
  - For other civil rights cases (non-Sexual Harassment or Sexual Harassment outside of the United States), the Title IX/EO Coordinator will obtain a written Determination Report from the investigators.



# Determination Report:



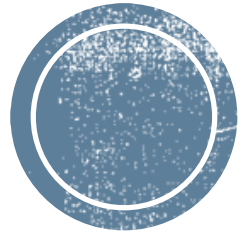
# Other Sexual Misconduct & Civil Rights Cases

# Determination Report

- The Determination Report for other civil rights cases (non-Sexual Harassment or Sexual Harassment outside the United States) should include:
  - Whether or not, based on a preponderance of the evidence, the alleged behavior took place and whether that behavior constitutes a civil rights violation. The determination shall include a summary of all evidence and information used to reach these conclusions.







# **Live Hearing: Title IX Cases**

# Live Hearing for Sexual Harassment Cases

- A Live Hearing must be scheduled no earlier than ten days after issuance of the Final Investigation Report.
- A Hearing Officer will oversee the hearing, make determinations as to the relevance of evidence/questioning, determine whether evidence will be permitted, and make the final determination regarding the allegations.
  - A Hearing Officer must be a different individual than any investigator or Title IX/EO Coordinator assigned to the case.



# Live Hearing for Sexual Harassment Cases cont.

- At the hearing, the Complainant and Respondent must be accompanied by an advisor.
  - The advisor is responsible for questioning the witnesses; the Complainant and Respondent are not permitted to ask questions directly.
  - If the party does not provide their own, CCCS will provide an advisor at no charge.
- 
- Following the hearing, the Hearing Officer will issue a Determination Report to the Title IX/EO Coordinator.
    - The report will state whether or not, based on a preponderance of the evidence, the alleged behavior took place and whether that behavior constitutes a civil rights violation.





# **Conclusion: Notice of Findings and Appeals**

# Once a Determination Report is received (either from the Investigators or Hearing Officer)...

- The Title IX/EO Coordinator will provide a Notice of Finding to the Complainant and Respondent notifying them of the findings. The parties will also receive a copy of the Final Investigation Report and Determination Report.
- Upon receiving the Notice of Findings, the parties will be advised of their right to appeal within 10 calendar days of service of the decision.
  - If the appeal is timely and meets the limited grounds for appeal, an Appellate Officer will be assigned.
  - Written notice of the outcome of the appeal will be provided simultaneously to the parties.
- Once the appeal process has been exhausted:
  - If the Respondent is found not in violation, the complaint shall be closed with no further disciplinary action.
  - If the Respondent is found in violation, the findings will be provided to the Disciplinary Authority to proceed in accordance with applicable policies.





**QUESTIONS?**



**Thank you for attending!**

Feel free to contact me with any questions.

**Tashana Taylor**

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