

Administrative Policy

Category: Health and Safety

Policy Number: 5009

Title: Title IX Compliance

Cochise College prohibits any discrimination as defined by Title IX of the Education Amendments of 1972 to include, but not limited to, gender based discrimination, sexual harassment, sexual misconduct, and sexual violence. Such acts can interfere with a student's ability to participate in or benefit from the college's academic and non-academic programs, an employee's ability to function in the workplace, or a campus visitor's ability to utilize the college. Accordingly, these behaviors are strictly prohibited. The procedures within this policy are intended to afford a prompt, thorough, and impartial response from the college to an allegation of gender discrimination, sexual harassment, and/or sexual misconduct in accordance with Title IX. Any Title IX Violations are to be reported to the Dean of Student Services or the Title IX Coordinator at 520-515-3623.

Procedure: 5009.1

Scope

This policy applies to all students, faculty, staff, independent contractors, guests, visitors, applicants, and college recognized student organizations. It shall apply to all incidents occurring on any of the college's campuses or centers, events off campus, and any incidents occurring off campus that involve both a student or employee as the alleged victim and a student or employee as the accused.

Procedure: 5009.2

Definitions

1. Gender discrimination

Title IX prohibits unlawful discrimination on the basis of gender. Unlawful gender discrimination includes, but is not limited to, unequal educational services based on sex, biased selection criteria that disfavor one sex, discrimination based on pregnancy, childbirth, disability due to pregnancy, acts of aggression such as verbal, nonverbal, or physical behavior directed at another because of that individual's sex and non-conformance to gender stereotypes.

2. Sexual Harassment

Unfavorable or unwelcome treatment or conduct of a sexual nature, made without consent and based on a person's gender or sex, that is severe or pervasive and has the purpose or effect of unreasonably interfering with an individual's academic performance or employment or creates an intimidating, hostile or offensive working, academic or college environment. Sexual harassment includes, but is not limited to:

Verbal and/or physical behavior including, sexually explicit jokes; stalking; sexual advances; unspoken sexual innuendo; implied or overt threats; insults, and taunts; obscene gestures; offensive pictorial, written, and electronic communications; and unwelcome touching.

3. Sexual Misconduct

Sexual misconduct is a form of sexual harassment and is defined as any intentional sexual touching, however slight, with any part of the body or with any object, by either a man or a woman upon either a man or a woman that is without consent. This includes, but is not limited to:

- a. Those offenses such as rape, sexual battery, unlawful sexual conduct with a minor, gross sexual imposition, sexual imposition, importuning, voyeurism; and public indecency.
- b. Sexual Exploitation: Taking non-consensual or abusive sexual advantage of another for one's own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, if that behavior does not otherwise constitute another sexual misconduct offense. This would include, but is not limited to, videotaping or allowing an observer unknown to either or both parties.
- c. Sexual Violence: A severe form of hostile environment sexual harassment that represents conduct involving physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent due to the victim's incapacity. An individual's incapacity may arise from use of drugs or alcohol or individual conditions including intellectual or other disability.
- d. Knowingly transmitting a sexually transmitted infection or disease through sexual contact without consent.

4. Hostile Environment Sexual Harassment

Hostile environment sexual harassment occurs when one or more instances of sexual harassment are severe or pervasive enough to affect an individual's ability to participate in or benefit in an educational program or activity. A hostile environment refers to sexually harassing conduct that is severe or pervasive and includes acts of sexual violence.

Any of the conduct described in the paragraphs above of this rule used by an individual implicitly or explicitly as the basis for academic decisions, administrative, or employment (including submission to or rejection of any such conduct), is considered sexual harassment.

5. Consent

Consent is defined as the voluntary, unambiguous agreement to participate in an act, the nature of which is known to and understood by the consenter. Consent may be given verbally or nonverbally and may be withdrawn at any time before completion of the act. A person may be incapable of giving consent due to physical incapacitation, physical or mental disability, threat, and coercion, the influence of alcohol or drugs, or age.

**Procedure: 5009.3
Incident Reporting**

All college employees who are made aware of any Title IX violations including sexual harassment and sexual violence are responsible for reporting violations to the Dean of Student Services or Title IX Coordinator. Reports that do not involve students shall be referred to the appropriate authority.

Students, employees, and visitors have the right to report violence, assault, or misconduct involving criminal behavior to local law enforcement authorities; the college strongly encourages victims to report these incidents and will assist upon request; provided, however, that the final decision is that of the victim. The confidentiality of all parties involved in a violence, assault, or misconduct complaint shall be strictly respected insofar as it does not interfere with the college's legal obligation to investigate allegations and to take corrective action. While the college strives to protect the anonymity of individuals who bring such incidents to official attention, in order to conduct a full and fair investigation, the identification of individuals involved may be required. An individual has the right to obtain a no contact or restraining order, or if such an order already exists, enforce such an order. The college shall honor any no contact or restraining order and assist law enforcement in the fulfillment of such an order.

When a victim reports that a sex offense has been committed, the college shall provide to the victim:

- Information on obtaining orders of protection, no contact orders, etc.
- Information on how the college will protect the confidentiality of the victim
- Written notification of available services for mental health, victim advocacy, legal assistance, and other available community resources
- Written notification about victims' right to change academic, living, transportation, or work situations *even if they do not formally report*
- Written explanation of a student or employee's rights and options, *regardless of whether the crime took place on campus or off campus*, including the possibility of making up exams or class assignments, or a leave of absence from school, if necessary due to the victim dealing with the offense

At the request of any victim of violence, the college shall make changes in academic and living situations as they are reasonably available to include class and/or campus transfers and student housing relocation.

1. Preservation of Evidence

Law enforcement is in the best position to secure evidence of a crime. Physical evidence of a criminal sexual assault should be collected from the alleged victim's person as soon as possible. If you believe you have been a victim of a criminal sexual assault, before washing yourself or your clothing, go to the Emergency Room. A medically trained professional is on call 24 hours a day, 7 days a week (call the Emergency Room if you first want to speak to the nurse). A victim advocate from the college can accompany you to the hospital and law enforcement or security can provide transportation. If a victim goes to

the hospital, local law enforcement will be called, but there is no obligation to talk to law enforcement or to pursue prosecution. Having the evidence collected in this manner will help to keep all options available to a victim, but will not obligate them to any course of action. Collecting evidence can assist the authorities in pursuing criminal charges, should the victim decide later to exercise it.

Hospital staff will collect evidence, check for injuries, and address concerns regarding possible pregnancy and exposure to sexually transmitted infections. If the victim has changed clothing since the assault, bring the clothing the victim had on at the time of the assault to the hospital in a clean, sanitary container such as a clean paper grocery bag or wrapped in a clean sheet (plastic containers do not breathe, and may render evidence useless). If the victim has not changed clothes, bring a change of clothes to the hospital, if possible, as they will likely keep the clothes the victim is wearing as evidence. The victim can take a support person with them to the hospital, and they can be accompanied through the exam, if desired. Do not disturb the crime scene—leave all sheets, towels, etc. that may bear evidence for law enforcement to collect.

2. Victim Assistance and Support

Access the college [Wellness and Life Resources](#) web page for victim support and information about local agencies that can provide support and assistance.

Procedure: 5009.4 Investigative Process

1. Investigation

All Title IX violations involving students will be investigated by the Dean of Student Services, or designee. Violations involving employees will be investigated by the Title IX Coordinator or designee. Local law enforcement will be contacted for all violations considered to be an issue of safety and welfare of employees or students.

Investigative procedures will include student and employee interviews and statements, security reports, legal reports, witness statements, and all pertinent information. The investigation shall be completed within thirty days after a formal complaint is submitted to the Dean of Student Services or Title IX Coordinator. If more time is required to complete the investigation, the complainant and the accused shall be notified of such in writing.

The Dean of Student Services or designee will present all student investigative information to the Title IX Coordinator, or designee. When the investigation is complete, the findings will also be shared in writing with both the complainant and the accuser within 10 business days.

If the accused is a college employee, a summary of the report will be shared with the appropriate supervisory area to ensure that the college responds appropriately. A decision will be made and shared with the complainant and accused, in writing, within 10 business days of the completion of the investigation.

2. Cooperation in Investigations

All employees and students have a duty to cooperate in investigations of alleged sexual harassment. This duty includes complying with any directive relating to confidentiality of the information provided or identity of the individuals involved or in providing information about the complaint or investigation. Failure to comply with such directives may result in disciplinary action.

Any employee or student under investigation for alleged misconduct, and the complainant, may bring an advisor or attorney with him/her to the disciplinary hearing, providing that hearing will not be delayed for this purpose, and further providing that the attorney will not be allowed to speak during the hearing. The college requires a minimum of five (5) business days prior notice of who the parties have chosen as an advisor or if they will have an attorney present.

**Procedure: 5009.5
Adjudication**

1. Title IX Hearing

Employees are subject to personnel policies and procedures outlined Board Policies, including but not limited to 640 Corrective Action, 641 Problem Resolution, and 643 Suspension, Demotion, Termination.

The Title IX Coordinator or designee shall hold an administrative hearing involving a student, notifying the complainant and the accused of the proceeding and charges. The administrative hearing is not a legal proceeding. The preponderance of the evidence is the standard of evidence used to determine the outcome of proceedings. All due process rights will be afforded the individual(s) while determining his/her responsibility for wrong doing and the applicability of sanctions. The administrative hearing will be conducted within 15 business days of the complainant and accused having received the written results of the investigation. The investigator may also be present during the hearing to answer any questions about his/her findings. The results of the hearing shall be shared in writing with the complainant and accuser within 15 business days of the completion of the hearing.

2. Due Process

The accused shall be entitled to:

- a. Written notification of the time and place of the hearing with sufficient time provided for preparation of a defense.
- b. Written statement of charges outlining time, place, date, nature of offense, and names of witnesses and complainants
- c. Not appear at the formal hearing, but if they choose not to appear, the formal hearing shall proceed to consider the case
- d. An advisor of his/her choice to assist in his/her defense. The advisor can help advise the student but cannot take part in the formal hearing
- e. Testify on his/her behalf, but is not required to do so
- f. The opportunity to admit or deny the allegation
- g. Two persons of his/her choice present at the hearing as observers
- h. Ask questions of the hearing officer or body and witnesses present at the hearing
- i. An explanation of the procedure and reasons for any judgment rendered, and the appeals procedures

- j. A reasonably expeditious hearing of his/her case

3. **Sanctions**

Employees are subject to personnel policies and procedures outlined Board Policies, including but not limited to 640 Corrective Action, 641 Problem Resolution, and 643 Suspension, Demotion, Termination.

Student sanctions or protective measures that may be posed after a final determination of rape, acquaintance rape, domestic violence, dating violence, sexual assault, stalking, or any other policy violation are as follows:

- a. **Disciplinary Probation**- written notice for violation of specific college regulations not rising to a higher level of responsibility.
- b. **Suspension**- including but not limited to college attendance. Other examples; exclusion from class, other activities or privileges.
- c. **Expulsion** – termination of student status within the institution.

4. **Amnesty**

The Dean of Student Services will not pursue disciplinary violations against a student for the students' prohibited use of alcohol or drugs if the student is making a good faith report of an act of violence, assault or misconduct.

5. **Appeal**

Employees may appeal actions as outlined in Board Policy 643 Suspension, Demotion, Termination.

A student has the right to appeal the findings, conclusions, and sanctions of the Title IX hearing. The student has 10 business days upon receipt of the administrative action to provide written request of appeal to the Vice President/Provost of Instruction. The appeal must be in writing and be based on one or more of the following, specifying which of the following the appeal is based:

- a. That the findings and conclusions are unsupported by the evidence as disclosed by the record.
- b. That the findings and conclusions contain an error of law or violate a college policy.
- c. That a party was materially prejudiced by a procedural violation that occurred at or in connection with the hearing.
- d. That the findings and conclusions are arbitrary or capricious, including that a sanction imposed is so excessively harsh so as to be arbitrary or capricious

The Vice President of Instruction/Provost's decision on appeal will be presented in writing to the Dean of Student Services, the Title IX Coordinator, the complainant and accuser within 15 business days of receipt of the student's appeal. The Vice President of Instruction / Provost's decision is final and not subject to further appeal.

**Procedure 5009.6
Retaliation**

Students and employees are encouraged to express his/her feelings in a responsible manner regarding incidents of violence, assault or misconduct. Any member of the college community who attempts to interfere, restrain, coerce, discriminate against, or harass (whether overtly or covertly) any individual responsibly pursuing a complaint of violence, assault or misconduct will be subject to prompt and appropriate disciplinary action.

**Procedure 5009.7
Administrative Action and Appeals Flowchart**

