

Title IX Overview & Case Studies

Taylor Hilyer

Director of Student Life

Alabama Community College System

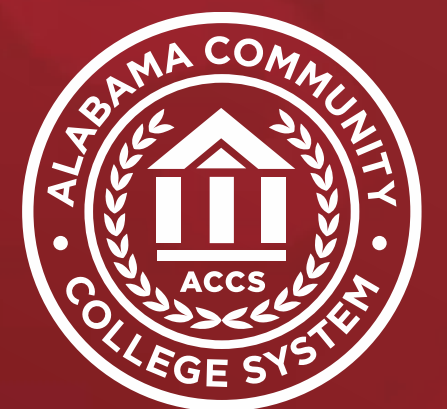
Spring 2023

Charlotte McLendon

Student Success Compliance Officer

Alabama Community College System

REAL. *Life.* **EDUCATION.**

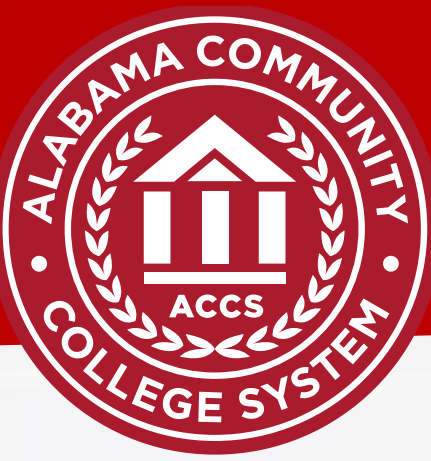


MEETING AGENDA

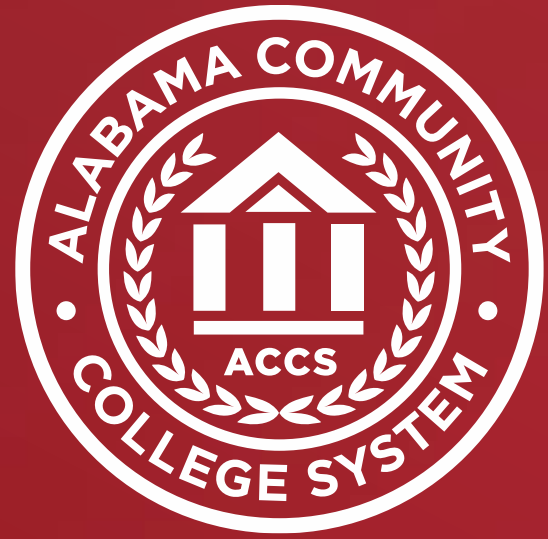


- Current Title IX Law
- Title IX Key Terms
- Reporting Title IX
- Pregnant and Parenting Students
- Retaliation
- Title IX Grievance Procedures
- Case Study 1
- Case Study 2
- Case Study 3
- Possible Changes- Biden Administration
- Upcoming Training
- Resources

HOUSEKEEPING ISSUES

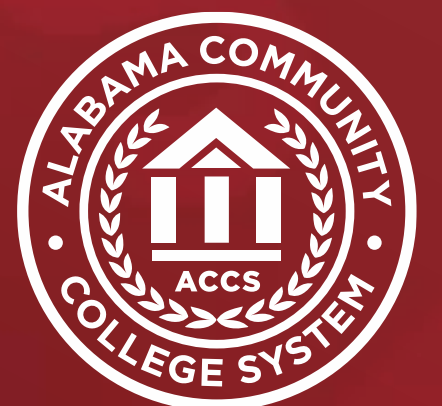


- **This presentation refers to topics of high sensitivity, and case studies will include detailed examples of sexual misconduct.**
- **There is an obligation to conduct Title IX matters free from bias and unlawful discrimination. That includes this training.**



Overview

REAL. *Life.* **EDUCATION.**



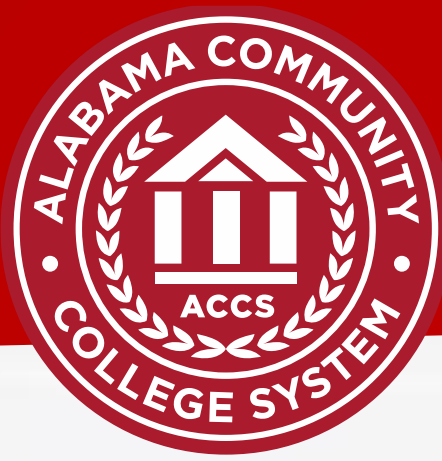
TITLE IX



Title IX is a federal civil rights law that states “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 education program or activity receiving Federal financial assistance”.

- Covers not only equity in athletic programming, but all forms of discrimination based on sex.
- Protects students and employees.
- Applies to all institutions that receive federal financial assistance, either directly or indirectly.
- Enforced by the U.S. Department of Education’s Office of Civil Rights.

TITLE IX CURRENT REGULATIONS



Current Title IX regulations were published on May 6, 2020, and took effect August 14, 2020

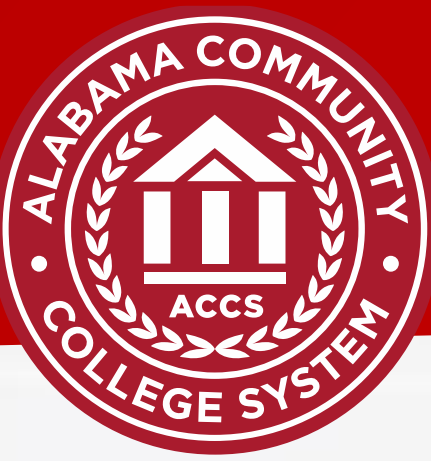
- Requires schools:
 - Respond promptly and supportively to persons alleged to be victimized by sexual harassment.
 - Resolve allegations of sexual harassment promptly and accurately under a predictable, fair grievance process that provides due process protections to alleged victims and alleged perpetrators of sexual harassment.
 - Effectively implement remedies for victims.

TITLE IX APPLIES TO.....



- Student on student matters
- Employee on employee matters
- Employee on student matters
- Student on employee matter

TITLE IX KEY TERMS



Complainant- An individual who is alleged to be the victim of conduct that could constitute sexual harassment. (The Accuser)

Respondent- An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment. (The Accused)

Officials with Authority- any official who has authority to institute corrective measures on behalf of the college

Supportive Measures – 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 a filing of a Formal Complaint or where no Formal Complaint is filed designed to restore or preserve equal access to the College’s education program or activity without unreasonably burdening the other party.

TITLE IX KEY TERMS



Title IX Grievance- the notice of sexual harassment or allegations of sexual harassment to the Title IX Coordinator or an official with authority

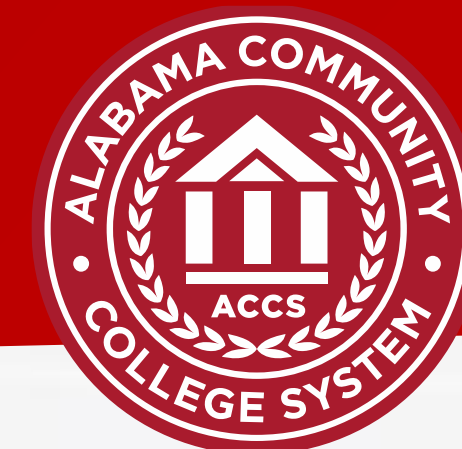
Formal Title IX Complaint- is a document signed by the complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the College investigate the allegation of sexual harassment.

Jurisdiction- Locations, events, or circumstances (operations) over which the institution exercises substantial control over both the respondent AND the context in which the sexual harassment occurs.

Title IX Jurisdiction

Pertains to actions of Prohibited Conduct committed by or against students and employees when:

- **On campus or property** owned or controlled by the College, including buildings owned or controlled by a student organization that is officially recognized by the College
- **In the context of a College employment or educational program or activity,** including, but not limited to, research, online, or internship programs



What is or May Be Title IX vs. What is NOT Title IX

What is or May be Title IX	What is NOT Title IX
<ul style="list-style-type: none">• Discrimination based on gender• Sexual Harassment• Bullying/Cyber-Bullying or Hazing when it involves sexual misconduct• Sexual Assault• Dating Violence• Stalking• Domestic Violence• Pregnancy Discrimination	<ul style="list-style-type: none">• Disability Discrimination (ADA)• Employment or Student Discrimination based on race, religion, or national origin (Title VII and Title VI)

FORMAL TITLE IX COMPLAINT



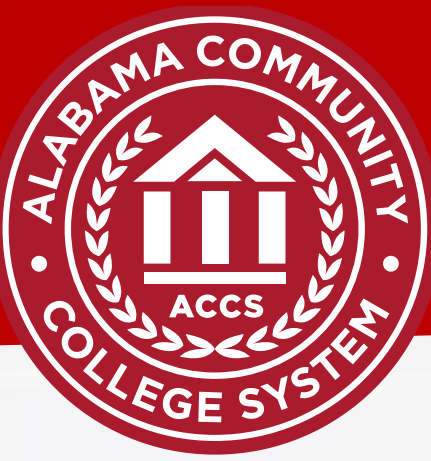
To qualify for a formal Title IX complaint the grievance must satisfy one or more of the following and have occurred within the college's jurisdiction.

An employee of the recipient (the College) conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct.

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.

Sexual assault, dating violence, domestic violence, or stalking as defined in the Clery Act.

MANDATORY & PERMISSIVE DISMISSAL



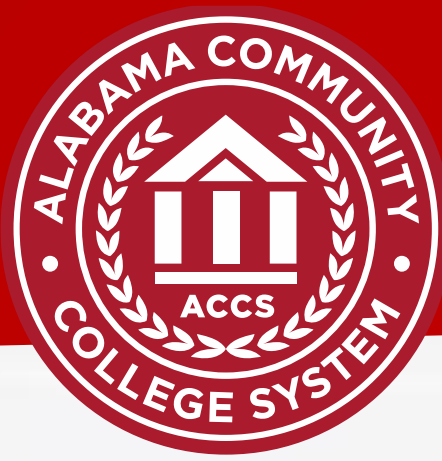
Mandatory Dismissal –

- The grievance does not meet the definition of sexual harassment as defined in the Title IX regulations
- Occurred outside the college's jurisdiction
- Did not occur in the U.S.

Permissive Dismissal –

- Complainant notifies the Title IX Coordinator in writing requesting to withdraw the Formal Complaint
- Respondent is no longer enrolled or employed by the institution
- Specific circumstances prevent the institution from gathering evidence sufficient to reach a determination

TITLE IX - REPORTING



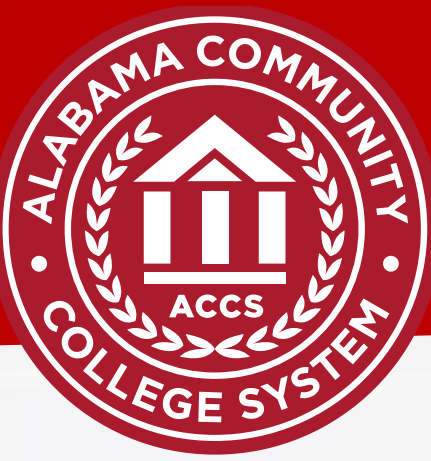
Anyone can report sexual and gender-based misconduct.

If you are a victim of sexual harassment or have knowledge of any conduct constituting sexual harassment in an educational program or activity of the College or which occurred on property owned by the College or controlled by the College, you are encouraged to report the grievance to the college's Title IX Coordinator or an Official with Authority.

Ways to Report

- Email
- Telephone
- Written Notice
- In Person

SUPPORTIVE MEASURES



Supportive measures may include, but are not limited to, the following:

- Counseling
- Extensions of deadlines or other course-related adjustments
- Modifications of work or class schedules
- Campus escort services
- Mutual restrictions on contact between the parties
- Changes in working or housing locations
- Leaves of absence
- Increased security and monitoring of certain areas of the campus.
- Medical Treatment

TITLE IX – PREGNANT & PARENTING

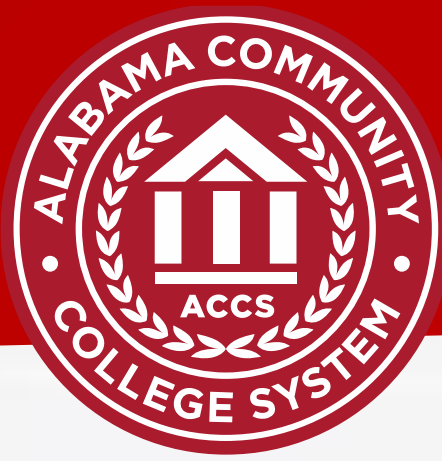


Title IX prohibits discrimination on the basis of sex – including pregnancy, parenting, and related conditions – in education programs and activities that receive federal funding.

Colleges and Universities cannot discriminate on the basis of:

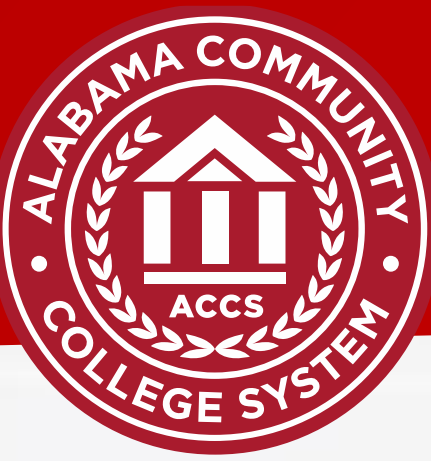
- Pregnancy
- Childbirth
- False Pregnancy
- Termination of pregnancy
- Recovery therefrom

TITLE IX- PREGNANT & PARENTING



- Students with pregnancy related conditions have the right to continue with their educational program for as long as they determine they are able.
- Students are under no obligation to disclose their pregnancy or pregnancy related condition, however if a student tells you they are pregnant or experiencing a pregnancy related condition, you may ask them if accommodations are needed and refer them to the Title IX Coordinator for assistance.
- Faculty and instructors should not request medical documentation or details related to the student's pregnancy or any related medical condition from the student.

EXCUSED ABSENCES AND MEDICAL LEAVE



- **Allow a student to continue participating in classes and extracurricular activities** even though they are pregnant. Pregnant student-athletes with pregnancy related conditions must be treated the same as ill or injured athletes.
- **Excuse absences** due to pregnancy related conditions for as long as the doctor says it is necessary.
- **Allow student to return** to the same academic and extracurricular status as before medical leave began, which should include **giving the student the opportunity to make up any work missed while out.**
- **Ensure that teachers understand the Title IX requirements related to excused absences/medical leave.** A teacher may not refuse to allow a student to submit work after a deadline that's missed because of pregnancy related conditions.
- If a teacher's grading is based in part on class participation or attendance and a student missed class because of pregnancy related conditions, the student **should be allowed to make up the participation or attendance.**
- Provide students with pregnancy related conditions with the **same special services** it provides to students with **temporary medical conditions.** This includes homebound instruction/at-home tutoring/independent study

RETALIATION



PROHIBITED

Neither the College nor other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose interfering with any right or privilege secured by Title IX, or because the individual has made a report or complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing conducted under the sexual harassment policy.

Retaliatory acts could include:

- giving students failing grades
- preventing students from participating in school activities
- threatening expulsion



Questions?

TITLE IX GRIEVANCE PROCEDURES



Process

- Reporting of Incident
- Initial Assessment
- Formal Investigation & Report
- Hearing
- Appeal

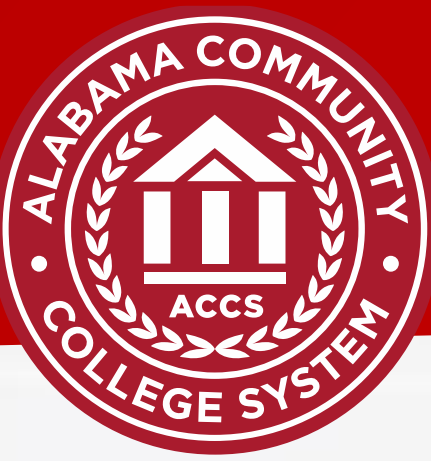
Initial Contact with the Complainant

- Written contact no later than five (5) business days after report is received
 - Supportive Measures
 - Title IX Policy and Procedures for filing a Formal Complaint
- Initial Meeting with the Complainant
 - Options (Informal Resolution vs. Formal Investigation)
 - Desired Outcome (What would you like to see happen?)

When Do I Contact the Respondent?

- Before the Notice of Allegations
 - Mutual No Contact Directive
 - Safety Concerns
- After the Notice of Allegations
 - Allow time for review before you outreach

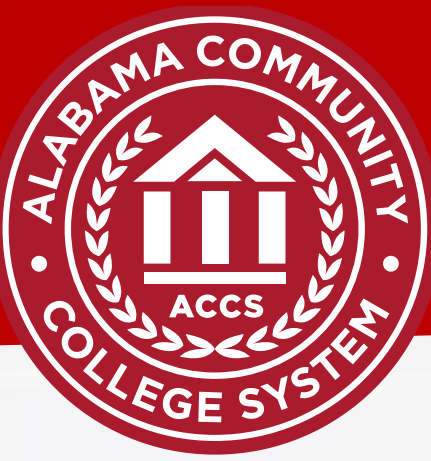
INITIAL ASSESSMENT



Checklist

- Does the College have jurisdiction in the matter?
 - Is the Complainant participating in the College's education program or activity?
 - Does the College have substantial control over the Respondent?
 - Was the location of the incident on campus or on property owned or controlled by the College?
 - Did the incident occur in the United States?

INITIAL ASSESSMENT

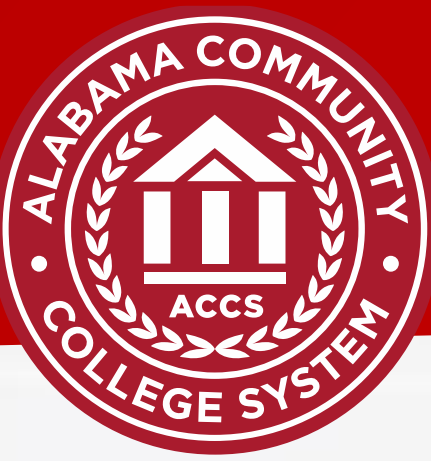


Charges – Is it Title IX?

Sexual Harassment

- Quid Pro Quo
- Hostile Environment
 - Severe, Pervasive, and Objectively Offensive (SP00)
- Sexual Assault, Dating Violence, Domestic Violence, Stalking

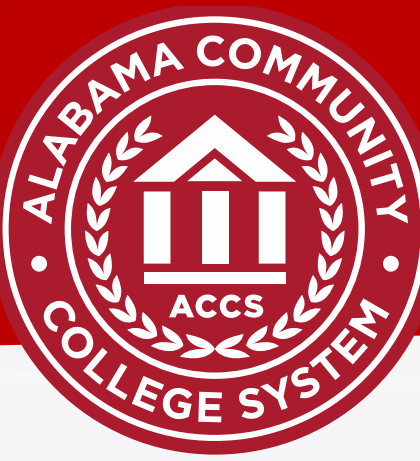
FORMAL COMPLAINT



Formal Complaint

- Must be submitted in email or written format to the Title IX Coordinator and must be signed by the Complainant.
- Title IX Coordinator can sign under certain circumstances, but the Title IX Coordinator is not the Complainant
- Formal Complaint must be signed to move to Investigation or Informal Resolution
- No Formal Complaint needed for Supportive Measures to parties

DISMISSALS



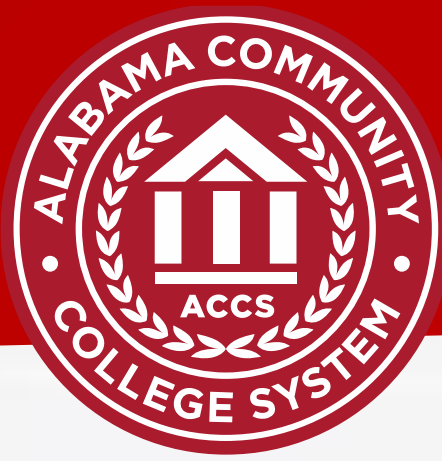
Mandatory and Permissive Dismissals

- Can occur during the Initial Assessment or later
- Mandatory
- Permissive
- Written notice to both parties within five (5) business days of Title IX Coordinator's decision
 - Parties' right to Appeal

Other Avenues for Address

- Sexual misconduct which does not fall within the Title IX policy may be investigated and addressed pursuant to other applicable, non-Title IX policies, including but not limited to the College's Harassment Policy or Student Code of Conduct and Discipline Non-Academic Policy.
- Who is responsible for addressing Non-Title IX matters?

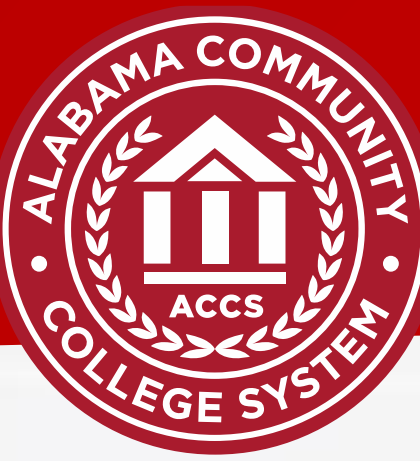
NOTICE OF ALLEGATIONS & INVESTIGATION



Notice Sent to Parties

- **Simultaneous Written Notice of Allegations to Both Parties**
 - **Formal Complaint**
 - **Grievance and Appeals Process**
 - **Possible Sanctions and Remedies**
 - **Availability of Advisors**
 - **Statement of Respondent's Presumption of Non-Responsibility**
 - **Review and Inspect Evidence**
 - **Provision on Making False Statements or Submitting False Information**

FORMAL INVESTIGATION



- **Investigation Tips**
- Lead with care and support (supportive measures)
- Maintain neutrality to both parties
- Thorough, Reliable, Impartial, Prompt
- **DOCUMENT, DOCUMENT, DOCUMENT**
- Free of Bias and Prejudice
 - Victim blaming, assuming/presuming "guilt" of Respondent, etc.

FORMAL INVESTIGATION



Interviewing Parties and Witnesses

- Introduce yourself and explain your role
- Manage expectations
- Give opportunity for questions
- Take breaks if needed
- Recording of Interviews
- Are witnesses eligible for supportive measures?

Questioning Techniques

- Inform party that questions may be difficult, okay if they can't remember everything
- Let them "tell their story" free of interruption
 - Tell me about your experience that led you here today. (Complainant)
 - Do you have a response to the allegations? (Respondent)
 - Can you tell me what you know about the allegations? (Witness)
- Establish a timeline
- Ask as many open-ended questions as possible
- Use "mirroring" language
- Ask them to define unfamiliar terms or phrases
- Address contradictions or differing statements
 - Tell me more about...
 - Can you help me understand...
 - Do you remember...

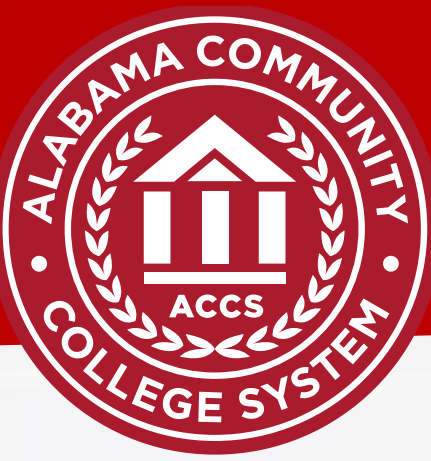
Evidence Collection

- Burden of proof and gathering evidence rests on the College and not the parties
- Investigators have discretion to determine relevance of all evidence collected
- Evidence can be submitted by parties, witnesses, and/or third parties or be collected by investigators
- Social Media evidence
 - Make sure messages, videos, etc. are time and date stamped
 - Ask party to verify evidence provided from other party and/or witnesses

Writing a Report

- Purpose of the report is to apprise both parties of the evidence the investigator has determined to be relevant in order to adequately prepare for a hearing and submit responses for the decision maker to consider
- Sections of Report – Executive Summary, Involved Parties, Procedural History, Formal Complaint, Potential Policy Violations, Jurisdiction, Summary of Interviews and Evidence, any Appendix items
- Handling responses to the report from parties

EVIDENCE REVIEW



Guidelines for Review

- The Title IX Coordinator will provide copies of the Report and all evidence to the parties and their advisors. Parties will have ten (10) business days to review the evidence and respond in writing to the Title IX Coordinator.
- The Title IX Coordinator will submit responses to the investigator for review and the Investigator will submit a final report and reviewed evidence to the Title IX Coordinator.
- The Title IX Coordinator will provide the final report and evidence to the parties and their advisors no later than ten (10) days prior to the live hearing.

Procedures

- The Decision Maker will notify the parties and their advisors and any witnesses of the hearing date.
- The hearing will be live and recorded. Hearings can be in person or virtual via Zoom. If a party requests not to be in the same room as the other party, the College must accommodate that request.
- For the purposes of cross examination, if a party does not have an advisor, the College will provide one free of charge.
- Decision Maker must submit Hearing Outcome Report to the Title IX Coordinator within ten (10) business days of the live hearing. The Title IX Coordinator will send written notice simultaneously to the parties within three (3) business days of receipt of the hearing report.

Procedures

- All parties, advisors, and witnesses are encouraged to attend the live hearing. However, if a party and/or witness does not attend the hearing or does attend the hearing, but does not submit to cross examination, the Decision Maker can still consider any statements made by that party and/or witness made during the investigation and/or hearing. The Decision Maker shall not draw any inference about the determination of responsibility based solely on a party and/or witness's absence from a hearing or refusal to answer cross examination or other questions.
- What happens if one party shows up but the other party doesn't?

Procedures

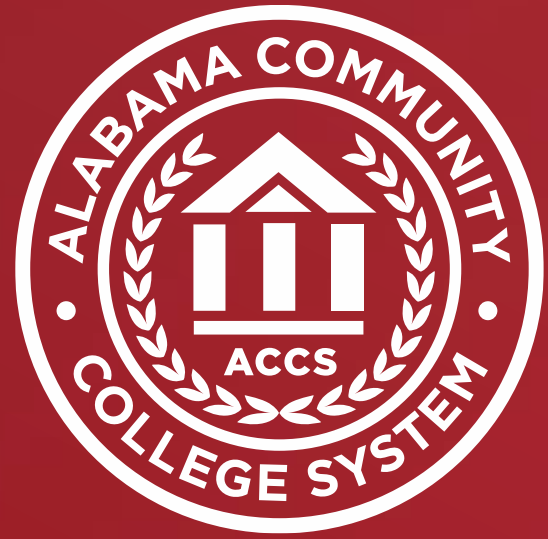
- **Grounds for Appeal of a Hearing Outcome/Dismissal of Formal Complaint**
 - **Procedural irregularity that affected the outcome of the matter**
 - **New evidence that was not reasonably available at the time of the decision regarding responsibility or dismissal was made that could affect the outcome**
 - **The Title IX Coordinator, Investigator, or Decision Maker had a conflict of interest or bias that affected the outcome**

Procedures

- Written request to the President must be filed within ten (10) business days following the party's receipt of the Hearing Report/Dismissal Letter
- The President of the College or his/her designee shall serve as the Appeals officer
- Are not bound by the decision of the Decision Maker
- Decision shall be rendered within thirty (30) calendar days of the initiation of the appeals process. May be extended with notification to parties.
- Is this decision final?

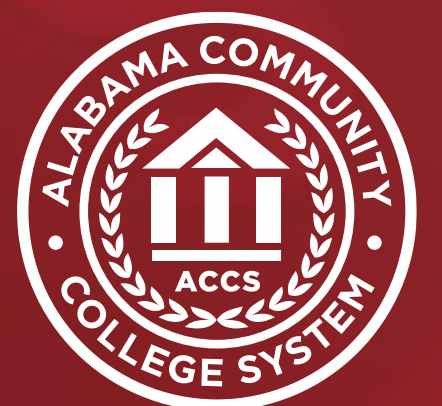
Resolutions other than Investigation

- **Informal Resolution**
 - Formal Complaint must be filed
 - Both parties and the College must agree
 - No investigation and adjudication, but parties can change their minds
 - Cannot be used for Employee on Student sexual harassment matters
- **Respondent's Assumption of Responsibility**



Case Study 1

REAL. *Life.* **EDUCATION.**

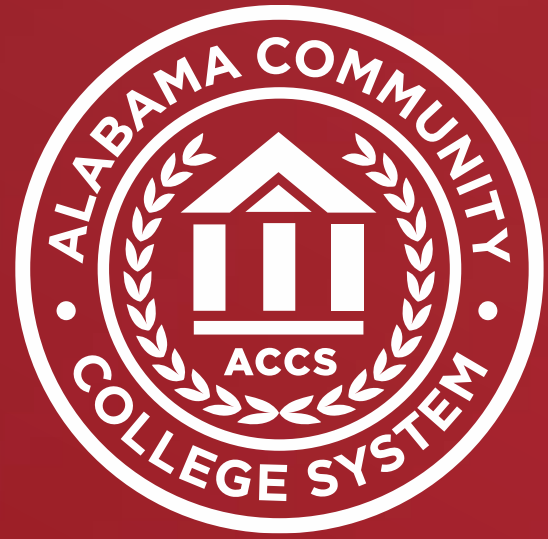


Narrative

- **Paul and Sara have been in a dating relationship for 2 years. Both are students at GSCC and take classes at the main campus. They do not take any classes together and both live in separate off campus apartments. Sara reports to the Title IX Coordinator that Paul has been verbally and physically abusive towards her during the relationship. Sara states that Paul, on two occasions, has called her names and yelled at her while on campus. Sara states all the physical abuse (slapping, hitting, pushing) took place at her off-campus apartment.**

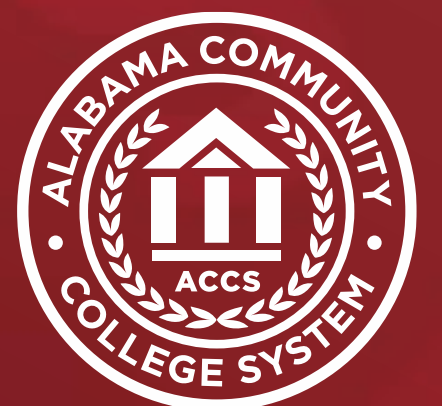
Questions

- **Is this a Title IX matter?**
 - If yes, what are the next steps? Potential policy violations?
 - If no, what are the next steps? Can the matter be referred to another department on campus?
- **Are the parties eligible for supportive measures?**
 - If yes, what supportive measures could you offer?



Case Study 2

REAL. *Life.* **EDUCATION.**

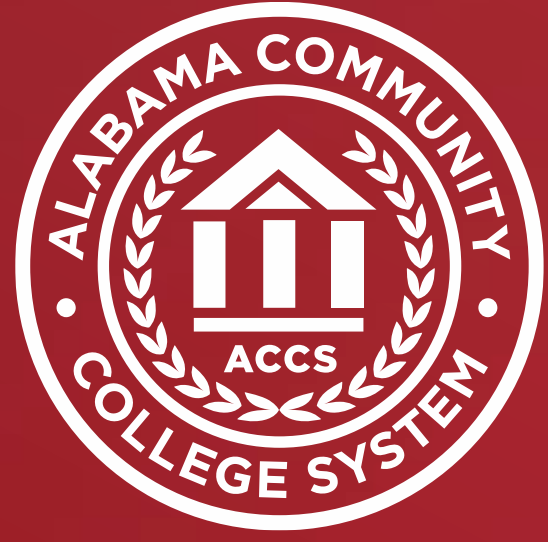


Narrative

- **Chloe graduated from GSCC in 2021 and is now a student at UAB. In Jan 2023, Chloe called GSCC and reported to the Title IX Coordinator that while at GSCC in 2021 a student named Derek touched her breasts and buttocks without her consent while they were alone in a classroom. Derek is still a current student at GSCC who is expected to graduate in May and is thinking of transferring to UAB. Chloe was made aware of this by a friend and called to report.**

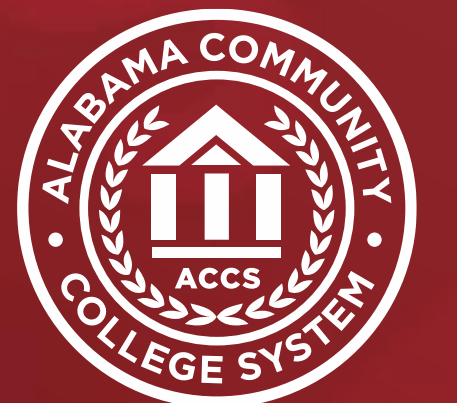
Questions

- **Is this a Title IX matter?**
 - If yes, what are the next steps? Potential policy violations?
 - If no, what are the next steps? Can the matter be referred to another department on campus?
- **Are the parties eligible for supportive measures?**
 - If yes, what supportive measures could you offer?
- **What if Derek is no longer a GSCC student?**



Case Study 3

REAL. *Life.* **EDUCATION.**



Narrative

- Owen reported to the Title IX Coordinator that his friend David told him something about one of the GSCC professors. David told Owen that Professor Sally Martin keeps asking David out to dinner and won't stop. David has told Professor Martin no and that it makes him uncomfortable and to stop. David told Owen that Professor Martin recently told David that if he doesn't go out with her, then she will fail him in the class. David is afraid to say anything because he really needs to pass this class. Owen reported that David is really stressed out and has talked about "just ending it all". Owen has convinced David to talk to the Title IX Office, but David doesn't want an investigation. David wants to handle the situation informally and remain anonymous.

Questions

- **Is this a Title IX matter?**
 - If yes, what are the next steps? Potential policy violations?
 - If no, what are the next steps? Can the matter be referred to another department on campus?
- **Are the parties eligible for supportive measures?**
 - If yes, what supportive measures could you offer?
- **What if Professor Martin is no longer a GSCC employee?**



Questions?

BIDEN ADMINISTRATION



NPRM Estimated Timeline:

July 2022 - Notice of Proposed Rule Making was officially published in the Federal Register.

September 2022 - Public Comments Closed

May 2023 - Final Regulations will be released.

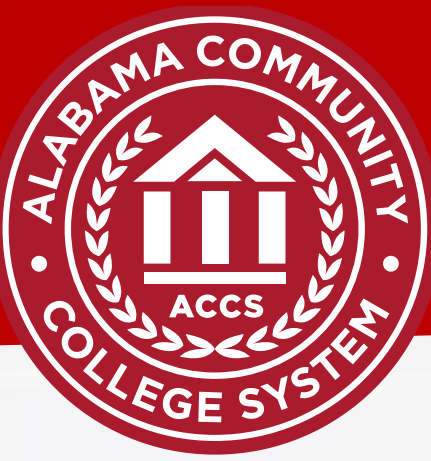
Fall 2023(?) - Final Regulations will be implemented.

EXPECTED CHANGES



- Mandated Training Expanded
- Additional/Modified Definition
- Additional Duties for Title IX Coordinators
- Updated Reporting Requirements
- Strengthened Retaliation Protections
- Discrimination Based on Pregnancy

UPCOMING TRAINING



Mark Your Calendars!

- Tuesday, February 28, 2023
- Topics to be Covered
 - Civil Rights Laws (Title IX, Title VII, Title VI, and ADA) and what to do when the roads meet.
- More information will be provided January 2023!

RESOURCES



ACCS 620.03 Sexual Harassment Complaints Policy and Chancellor's Procedures - <https://www.accs.edu/about-accs/board-of-trustees/policies-and-procedures/>

ICS Title IX University - <https://icslawyer.com/titleixu/>

The Office Of Civil Rights (OCR) - <https://www2.ed.gov/about/offices/list/ocr/index.html>

Taylor Hilyer

Director of Student Life

Alabama Community College System

(e) taylor.hilyer@accs.edu

(o) 334.293.4609

Dr. Tera Simmons

Executive Vice President

Gadsden State Community College

(e) tsimmons@gadsdenstate.edu

(o) 256-549-8230

Charlotte McLendon

Student Success Compliance Officer

Alabama Community College System

(e) charlotte.mclendon@accs.edu

(o) 334-293-4725

REAL. *Life.* **EDUCATION.**

