Sexual Misconduct, Relationship Violence and Stalking

Process Pool Training Spring 2021

Welcome & Introductions

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Housekeeping Items

- Please keep your camera on and participate.
- Please mute yourself when you are not speaking.
- Distractions may come, but they do not have to overcome.
- No breaks are scheduled throughout the day. Take care of yourself.
- Questions please! Feel free to unmute yourself or use the chat to ask questions.

- This training will be recorded and shared with participants.
Training Outline

<table>
<thead>
<tr>
<th>Time</th>
<th>Session</th>
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<tbody>
<tr>
<td>10:00 am</td>
<td>Welcome &amp; Introductions</td>
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<tr>
<td>10:10 am</td>
<td>Legislative Review &amp; Spelman Policy</td>
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<tr>
<td>10:55 am</td>
<td>Break</td>
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<td>11:05 am</td>
<td>Break</td>
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<tr>
<td>11:15 am</td>
<td>Break</td>
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<tr>
<td>11:30 am</td>
<td>Welcome &amp; Introductions</td>
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How did we get here?

Evolution of Campus Response

- **1970s**: Title IX of the Educational Amendments (applicable to athletics and admissions)
- **1992**: Clery Act
- **1995**: Campus Sexual Assault Victims Bill of Rights
- **1996**: Violence Against Women Act
- **1997**: OCR Sexual Harassment Guidelines
- **1999**: U.S. Department of Education established
- **2001**: Dear Colleague Letter
- **2004**: Dear Colleague Letter
- **2006**: Dear Colleague Letter
- **2010**: All of the above
- **2013**: Dear Colleague Letter
- **2014**: Dear Colleague Letter
- **2015**: Comprehensive Student Guidance
- **2016**: Title IX Sexual Harassment Regulations
"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."
Campus Title IX Requirements

- Prevent discrimination on the basis of sex in its education and working environment.
- Identify an employee to coordinate its efforts.
- Institutions must take prompt and effective action, reasonably calculated to end the discrimination, prevent its recurrence, and, remedy its effects.

Clery Act

- A consumer protection law to provide the campus community with information about crime and the safety of campuses
  - Crime alerts
  - Annual report
  - Training & awareness programs
  - Rights to victims of sexual assault, dating violence, domestic violence and stalking

Spelman Policy & Complaint Resolution Procedure Overview
Policy Jurisdiction

Applies to all
- Student/ student organizations
- Employees (including faculty)
- Contractors and Third-party visitors

Applies to all behavior
- Occurring within our education program/ activity (Title IX)
- Conduct that affects our living, learning and working environment. (Clery)

Scope of Spelman’s Education Program & Activity

Events, circumstances and locations in which Spelman exercises control
- Class, labs, field trips, etc.
- Locations owned by student organizations

Reporting Incidents

Who can report: Anyone, most employees are required to report suspected policy violations.

What to report: Policy violations that affect the College’s working, living or learning environment.

When to Report: Immediately, however there are no limitations. The college’s ability to take action is determined by the accused’s status at time of the report.

Confidential Disclosure: Disclosures made to personnel in health services, religious life, counseling center, and/or our Magellan EAP do not constitute reporting to the College.
Prohibited Conduct

Sexual Harassment

Definition: A range of behaviors based on sex
1. (Quid Pro Quo) An employee of the college conditioning service, benefit or aide on participation in unwanted sexual activity;
2. (Hostile Environment) Unwelcome conduct (by anyone), determined by a reasonable person to be so severe, pervasive and/or objectively offensive that it effectively denies access to the education program/activity;
3. Sexual Assault, dating violence, domestic violence and stalking

Severe, Pervasive & Objectively Offensive

Severe
The severity of an incident depends largely on the nature and scope of the conduct, although you can also consider impact.

Pervasive
How widespread, openly practiced, prevalent, and/or distributed the conduct is.

Objectively Offensive
Would a reasonable person in the context in which the conduct occurred deem the conduct to be offensive?
Gender-Based Discrimination

Unwelcome conduct based on an individual actual or perceived sex, sexual orientation, gender identity/ expression, or pregnancy status:
- Threatening or causing harm, extreme verbal abuse
- Discrimination
- Intimidation
- Bullying/ Cyber bullying
- Hazing

Sexual Exploitation

Sexual exploitation occurs when:
- One person takes non-consensual or abusive sexual advantage of another for his/her own advantage or benefit,
- or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of other sexual misconduct offenses.

Sexual Assault
(Fondling or attempts)

- The touching of the private body parts of another individual (buttocks, groin, breasts) for the purpose of sexual gratification, forcibly;
- without the consent or against the individual’s will, or when an individual lacks the capacity to give consent.
Sexual Assault
Rape, Sodomy or attempts

- Penetration, no matter how slight, by a tongue, penis, finger or inanimate object, of the vagina or anus;
- Oral penetration by a sex organ of another individual,
- Without the consent or against the individual’s will, or when an individual lacks the capacity to give consent.

Sex Offenses
(Statutory Rape & Incest)

Statutory Rape
Non-forcible sexual intercourse, with a person who is under the statutory age of consent of 16 years old.

Incest
Non-forcible sexual intercourse, between persons who are related to each other, within the degrees wherein marriage is prohibited by Georgia law.

Consent
- Words or actions that show a knowing and voluntary agreement to engage in mutually agreed, specific, sexual activity.
- No always means no
- Yes does not always mean yes
**Force & Coercion**

**Force**
- Physical force: hitting, pushing, holding, pinching, leaning on, or display or use of a weapon
- Threats: of physical violence or threats of an overt act
- Intimation: implied threat, using physical presence

**Coercion**
- Unreasonable pressure for sexual activity. What was the...
  - Frequency
  - Duration
  - Intensity of the request for sexual access?

**Incapacitation**
- A person can not consent if they are unable to understand what is happening.
- Someone who can not make rational, reasonable decisions because they lack the capacity to give knowing and informed consent.

**Dating Violence**
- Violence committed by a person who has been in a social relationship of a romantic or intimate nature with the complainant.
- When determining the nature of the relationship, the college examines:
  - Length
  - Type of the relationship
  - Frequency of interaction.
Domestic Violence

Felony or misdemeanor crime of violence committed by a current or former spouse or intimate partner
(i) a person who shares a child in common with the complainant
(ii) a person who is cohabitating or has cohabitated with the complainant as a spouse or intimate partner.
(iii) a person similarly situated to a spouse of the complainant.

Stalking

A course of conduct [two or more acts] directed at a specific person, that would cause a reasonable person to (I) fear for their own safety or the safety of others or suffer substantial emotional distress.

Technology is the #1 facilitator of stalking among college students.

Retaliation

- Anyone who submits a good faith report is protected against retaliation.
- Retaliation is:
  - Any adverse action, taken against a person participating in a protected activity, because of their participation in that protected activity.
- The College is expected to keep private the identities of individuals involved in a complaint.
Other Offenses (when sex or Gender based)

- Threatening or causing physical harm
- Discrimination
- Bullying/ Cyberbullying
- Intimidation
- Hazing

Policy Provisions

- Amnesty
- Attempted Violations
- False Reports
- Parent/ Guardian Notification (Minors)
- Past Sexual History Exclusion

Title IX Sexual Harassment Jurisdiction Checklist:

- Complainant is participating or attempting to participate in Spelman’s education program/ activity
- Spelman exercised control over the location, event or circumstance where the alleged harassment occurred.
- Spelman exercised control over the Respondent
- The alleged conduct occurred in the United States
Complaint Resolution Process Overview

INITIAL INTAKE
INITIAL ASSESSMENT
SUPPORTIVE MEASURES
INVESTIGATION
COMPLAINT RESOLUTION

Complaint Resolution Requirements

Process A
- Title IX Sexual Harassment Regulation Complaint
- In the United States
- Within the College’s jurisdiction/within scope of educational program/activity
- Spelman has control over Respondent

Process B
- Violation of Spelman’s policy
- Not in the United States
- Outside of the College’s jurisdiction/outside of the College’s scope of educational program/activity
- Spelman does not have control over the Respondent
Complaint Resolution Procedures

**Process A**
- Formal Complaint
- Investigation
- Investigative Report Review
- Advisor Identification
- Hearing
- Appeals & Informal Resolution

**Process B**
- Complaints dismissed under Process A can be investigated & adjudicated by Process B.
- Where appropriate, Process B is consistent with Process A requirements.
- No cross examination

Spelman student complainant alleges sexual assault by Spelman student respondent that occurred in Spelman dorm.

CAU student who is not cross-registered at Spelman alleges sexual assault by a Spelman student respondent that occurred during an event open to the public in Sister’s Chapel.
A faculty member sends a student an inappropriate image to their email. The student reports the incident to the faculty chair.

The Hearing Process

- Title IX Coordinator
- Involved Parties
  - Complainant
  - Respondent
  - Witness(es)
- Investigator
- Decision-maker(s)
  - One or Three
- Advisors
- Assistive Services
Hearing Procedures

- One Decision maker will serve as chair, two others as panelists.
- The hearing facilitator will notify parties of the date for the hearing, parties have three days to object to the hearing date, time or location.
- Parties can cancel any decision maker participation in the hearing at least 48 hours before hearing.
- Hearings are closed to the public.

Rules of Decorum

- Opening and closing statements are permitted only by the Complainant and Respondent.
- An Advisor's role is limited to cross examination in the hearing. A party may not directly ask questions to the opposing party or any witness.
- A party or witness must wait for the Decision Maker to determine whether a question is relevant before answering each question.
- Parties and Advisors must respect the personal space of other parties and witnesses.
- Advisors will not speak over each other or the parties.
- If a party or an Advisor needs a break during a hearing, they may ask the Decision Maker who will allow for such reasonable breaks in an equitable manner and at appropriate times throughout the hearing.

HEARING ORDER

- Introduction by Decision Maker
- Brief overview of Hearing purpose for hearing
- Complainant Opening Statement, if any
- Respondent Opening Statement, if any
- Decision Maker Questioning
- Cross-Examination (Process A)
- Direct-Examination by Advisor
- Complainant Closing Statement, if any
- Respondent Closing Statement, if any
## Components of an Investigation Report

- Executive Summary
- Procedural Timeline
- Applicable Policy (ies)
- Executive Summary/Jurisdictional statement
- Incident Report
- Complainant Interview Summary
- Complainant’s witnesses Interview Summary
- Respondent’s interview summary
- Respondent’s statement
- Respondent’s witnesses interview summary
- Related Evidence
- Investigator summary: Consistencies, inconsistencies, and credibility assessments

## Rights in the Process: Advisors

- Attend annual Advisor training facilitated by the Title IX & Compliance Office (on campus staff only).
- Follow college policy and expectations.
- Help the party prepare for each meeting and advise ethically, with integrity, and in good faith.
- Assist the party in identifying relevant witnesses to suggest and information to submit during an investigation.
- Accompany the party to all meetings and interviews at which the party is entitled to be present.
- Assist in the preparation and review of written statements, investigation reports, appeal documents, etc., as requested by the party.
- Advise the party without disrupting proceedings, consult with the party, either privately or in private, either by conducting a personal interview or at any time the party or their advisors request it.
- Conduct cross-examination of hearing participants, as applicable, on behalf of the party.
- Maintain the privacy of any information and records shared with Advisors.
- Complete any forms required, consistent with College Policy and Practice (ie NDA, Confidentiality agreement, Advisor Expectations).
- The Advisor is expected to work with the Party throughout the duration of the grievance process.
Rights in the Process

- Right to an advisor of choice
- Right to timely access to review all the evidence related to the complaint
- Right to present witnesses and evidence
- Timely notice of meetings at which the accuser and accused, or both, may be present

Rights in the Process

- Conducted by official who do not have a conflict of interest or bias for or against the accuser or the accused
- Proceedings must be conducted by official who receive annual training
  - Issues related to these offenses
  - How to conduct processes that protect the safety of the victim and promotes accountability
- Right to Appeal the outcome

Questioning During a Hearing

Process A

- Decision-maker may ask questions of both parties.
- Parties can submit questions to Decision-makers for other parties and witnesses.
- Prior to a party or witness answer the question passed by an Advisor, the chair of the Decision-makers will determine if the question is relevant.

- For each question deemed relevant, the Chair will state for the record their rationale.
- Relevant records, exhibits, and written statements may be accepted as information for consideration by the review panel.
- Any statement provided by a party or witness who does not submit to questions by advisors may not be used to decide on a policy violation.
Questioning During a Hearing

Process B

- Decision makers may ask questions of both parties and witnesses
- Parties can submit questions to the decision makers for consideration to ask the other party and witnesses
- The decision makers will determine if the question is relevant or rephrase if inappropriate
- The decision makers will then pose the question(s) to the respondent or complainant instead of the advisor.

Questioning Best Practices

- Examine actions that have direct relation to the complaint under review. Avoid asking questions out of your own curiosity.
- Avoid offering wisdom to parties
- Use open ended questions; put responsibility on parties or witnesses to give information which helps decision-makers better understand what occurred.
- Close ended questions are useful for obtaining specific pieces of information

Useful Phrases in questioning

- Could you tell me more about...?
- How did you feel about/when...?
- What did you do after...?
- What happened when...?
- What do you mean when you say...?
- What is/was your reaction to...?
- How did you become involved in...?
- What's your understanding of the ... policy?
Standard Evidence
Preponderance of the Evidence

A reasonable person would conclude that the events in question occurred (or did not occur).
- In other words, 50% and a feather
- If the evidence is 50/50, the finding must be not responsible
- It is not what you feel, but what is documented through reliable and credible evidence

Putting the Pieces Together...
Sanctions

When determining an appropriate sanction, the panel should consider the following:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- Aggravating and mitigating factors
- Previous allegations or allegations involving similar conduct

Sanctions

- The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment, and/or retaliation
- The need to remedy the effects of the discrimination, harassment, and/or retaliation on the community
- The impact on the Parties
- Any other information deemed relevant by the Decision-maker(s)
Sanctions Continued

- One or more sanction can be imposed.
- Sanctions are intended to be educational and punitive.
- In addition to sanctions, the college will implement remedial measures for the complainant or the community.
- A one-size-fits-all approach is often ineffective at discouraging misconduct, and fails to consider the circumstantial differences that contribute to behavior that violates policy.

Aggravating, Mitigating and Compounding Effects

- **Aggravating:** Any fact or circumstance that increases the severity or responsibility of a policy violation.
- **Mitigating:** Also known as extenuating circumstances, is any information or evidence presented to the panel regarding the respondent or the circumstances of the violation that might result in reduced charges or a lesser sanction.
- **Compounding:** These factors are often responding party specific, such as a prior conduct history or cumulative violations, and can “bump” the sanction range higher to include more severe sanctions, enhanced sanctions, and/or longer sanctions.

Commonly Used Sanctions

The following are the typical sanctions that may be imposed upon students or organizations singly or in combination:

- Letter of Warning
- Disciplinary Probation
- Suspension
- Expulsion/Dismissal
- Revocation
- Withholding Diploma of Degree
- Transcript Notation
- Educational Project
- Suspension from Housing
- Restitution
- Restricted Access
Commonly Used Sanctions
The following are the typical sanctions that may be imposed upon employees singly or in combination:

- Verbal Warning
- Written Warning
- Performance Improvement Plan
- Required Counseling
- Required Training or Education
- Loss of Annual Pay Increase
- Suspension with Pay
- Suspension without Pay
- Demotion
- Revocation of Tenure
- Termination

Outcome Letters
- Allegations
- Procedural steps from complaint to hearing
- Facts & conclusion related to each allegation
- Statement and rationale for decision
- Sanctions imposed, if applicable
- Remedies offered or provided to the complainant
- Statement of when determination will be final
- Rights and procedure for appeal.

Questions?