**Live Grievance Hearing Procedure**

The Title IX Coordinator is administratively responsible for coordinating all aspects of the formal grievance.

1. Notice of Hearing—The Respondent and Complainant will be provided the Notice of Hearing by the Title IX Coordinator at least ten (10) days prior to the date of the hearing. The timeframe in which the hearing is conducted may be extended for good cause at the discretion of the Title IX Coordinator. Good cause may include the availability of the parties, the availability of witnesses, the timing of semester breaks, or any other extenuating circumstances. Hearings may be scheduled whenever the College is officially open.

The Complainant and Respondent will be notified in writing of:

* The date, time and location of the hearing.
* The charges to be reviewed, including the date, time, location and factual allegations concerning the violation.
* The provisions of the policy alleged to have been violated.
* The name and contact information of the Decision-Maker.
* How to challenge participation of the Decision-Maker on the basis of conflict of interest or bias.
* The right to have an Advisor present at the hearing and to conduct questioning on the party’s behalf; that HCC will provide an Advisor to conduct questioning on behalf of the party at the hearing if the party does not have an Advisor present for the hearing.
* How to request that witnesses be present at the hearing.
* Information about the hearing format and the sanctions that may be imposed.

1. Role of the Decision-Maker

* To be free from conflicts of interest and bias for or against either party and to conduct a hearing and adjudicate in a manner that is fair and impartial by avoiding prejudgment of the facts at issue. The Decision-Maker may use technology at a live hearing.
* The Decision-Maker role is to provide all parties with an equitable opportunity to be heard, to make relevance determinations, and to objectively evaluate all relevant inculpatory and exculpatory evidence in order to reach a full and fair determination as to responsibility and imposition of any sanction, should there be a finding of responsibility. The Decision-Maker will review the investigative report and any written statements provided by the parties in response to the investigative report, all exhibits, and any additional relevant evidence introduced at the hearing. The Decision-Maker will determine whether there is sufficient evidence, by a preponderance of the evidence, to support a finding of responsibility as to each element of each policy violation at issue. The Decision-Maker may not base credibility determinations on a person’s status as a Complainant, Respondent or witness. Where a Complainant or Respondent declines to participate in a hearing, the Decision-Maker may not make an adverse inference against that party.

1. Guidelines for the Live Grievance Hearing—The parties will be provided with the Final Investigative Report a minimum of ten (10) days prior to the live grievance hearing.
2. The Title IX Coordinator will also provide both the Complainant and Respondent with an informational packet that will include the final investigative report, hearing rules and procedures, and the list of Title IX Hearing Panel officers.
3. The following are general guidelines for the hearing:

* The hearing will be conducted within an educational nature and forum, not subject to the rules of criminal and court proceedings.
* The hearing normally shall be conducted in private with the Decision-Maker, parties, advisors and witnesses providing statements when called.
* The hearing shall be conducted live. Separate rooms, with technology enabling the Decision-Maker and the parties to simultaneously see and hear all proceedings may be arranged at the request of either party.
* The Complainant, Respondent and their Advisors, will be allowed to attend the entire portion of the live grievance hearing where information is received.
* The Complainant and Respondent will receive the name(s) of the Decision-Maker prior to the live hearing. Either party may challenge any Decision-Maker prior to the live hearing if they believe they have a conflict of interest. The Title IX Coordinator will review the concern and will have sole discretion to make a change in Decision-Maker.
* In hearings involving more than one respondent, the Title IX Coordinator may permit the live hearing concerning each person to be conducted either separately or jointly.
* The parties have the right to be assisted by an Advisor that they select. In the event a party does not select an Advisor, the College will provide an Advisor who will conduct cross-examination on behalf of that party. Parties will not be permitted to conduct cross-examination on their own. The Title IX Coordinator may require parties to acknowledge whether they intend to have an Advisor present during the hearing.
* The Complainant, Respondent and the Decision-Maker may arrange for witnesses to present pertinent information at the hearing. Witnesses will provide information to and answer questions from the Decision-Maker and answer questions during cross-examination by either party’s Advisor.
* The Decision-Maker will make all determinations of relevance and procedure for the hearing.
* After the portion of the hearing concludes, in which all pertinent information has been received, the Decision-Maker will determine, by private deliberation whether the Respondent has violated the sexual harassment policy.
* The Decision-Maker’s determination shall be made on the basis of whether it is more likely than not (a preponderance of evidence) that the Respondent violated the College’s sexual harassment policy.
* There shall be a single verbatim record, such as a tape recording of the live grievance hearing. The record shall be the property of the College but, upon request, will be made available to the parties for inspection or review. No other recording is to be made during the hearing.

1. Live Grievance Hearing—Hearings will be conducted either in-person or virtually by all parties with technology that enables the Decision-Maker and parties to simultaneously see and hear all participants.
2. The hearing is an opportunity for the parties to address the Decision-Maker. The parties may address any information in the investigative report and supplemental statement submitted in response to the investigative report. The Title IX Coordinator will make all evidence directly related to the allegations, as shared in the evidence review, available to the parties at the hearing, including for the purposes of cross-examination.

* The Title IX Coordinator will request the Complainant and Respondent submit a written impact or mitigation statement for consideration by the Decision-Maker. The decision whether to provide an impact or mitigation statement is completely voluntary.
* An impact statement is written information from the Complainant regarding how the prohibited Conduct has affected them and the Complainant’s views on an appropriate sanction. Impact statements may include a description of: Emotional impacts caused by the prohibited conduct; negative social or educational consequences arising from the prohibited conduct; medical or psychological consequences sustained as a result of the prohibited conduct; the Complainant’s view on the prohibited conduct; or the Complainant’s view on the appropriate sanction.
* A mitigation statement is written information from the Respondent regarding any potential mitigating factors. Mitigation statements may include a description of: the Respondent’s previous good character; worthy social or academic contributions and public service; whether the Respondent accepted responsibility for the prohibited conduct; cooperation with the investigation; the Respondent’s mental or physical health; the Respondent’s view on an appropriate sanction; and the likely effect of the sanctions on Respondent.

1. The Decision-Maker has the discretion to determine the format for the hearing and its deliberations. However overall the format for the hearing will be as follows:

* Opening Statement—Typically, the Complainant and Respondent will have an opportunity to provide an opening statement to the Decision-Maker.
* Witnesses—Each party will then have an opportunity to address the Decision-Maker and to respond to questions by the Decision-Maker, or as described below, the other party’s Advisor. The Decision-Maker will also hear from relevant witnesses, including the Investigator(s). Each party will have the opportunity to question the other party, the witnesses, and the Investigator(s) through their Advisor of choice or hearing Advisor provided by the College directly, orally, and in real time. If a party does not have an Advisor present at the live hearing, the College will provide an Advisor, for questioning on behalf of that party.

Only relevant questions may be asked of a party or witness. Before a Complainant, Respondent or witness responds to a question, the Decision-Maker will first determine whether the question is relevant and briefly explain any decision to exclude a question as not relevant as defined above. If a party or witness does not submit to questioning by the other party’s Advisors at the hearing, the Decision-Maker may not rely on any statement made by that party or witness in reaching a determination regarding responsibility. The Decision-Maker may not draw any inference from the decision of a party or witness to not participate at the hearing.

* Closing Statement—After all parties and witnesses have been heard, the parties will have an opportunity to provide a closing statement. The Advisor may not provide the opening or closing statement and may not provide answers or responses on behalf of a party. The Advisor’s role during the hearing is to conduct questioning of the other party and any witnesses. A party may never conduct questioning of the other party themselves.
* Recording—An audio recording will be made of the hearing. The recording will be maintained by the Office of Equity for at least ten years from the date of the hearing. A written transcript of the hearing will not be prepared. Requests to listen to and copy the audio recording of a hearing should be made to the Title IX Coordinator.
* Advisors—At the live 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 live hearing will be conducted directly, orally, and in real time by the party’s Advisor of choice and never by a party personally. All questioning will be relevant, respectful, and non-abusive. No party or witness will be “yelled” at or asked questions in an abusive or intimidating manner.
* Relevance—The Decision-Maker may determine if a question is irrelevant, however, parties are not permitted to waive a question.

If a party or witness does not submit to cross-examination at the live hearing, the Decision-Maker will not rely on any statement 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’s absence from the live hearing or refusal to answer cross-examination or other questions. 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.
* Information protected by a legally recognized privilege.
* Questions and evidence about the reporting party’s sexual predisposition or prior sexual behavior, unless:

Such questions and evidence about the complainant’s prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant.

The questions and evidence concern specific incidents of the reporting party’s prior sexual behavior with respect to the responding party and are offered to prove consent.

Any party’s medical, psychological, and similar records, unless the party has given voluntary, written consent.

Party or witness statements that have not been subjected to cross-examination at a live hearing.

The College will not exclude relevant evidence because such relevant evidence may be unduly prejudicial, concern prior bad acts, or constitute 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. Before a party or witness answers a cross-examination or other question, the Decision-Maker will first determine whether the question is relevant and explain any decision to exclude a question as not relevant. The Decision-Maker will not require parties to submit cross-examination questions before they are asked. The Decision-Maker is not required to give a lengthy or complicated explanation of a relevancy determination during the hearing.

* 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.

1. Written Notice of Outcome—The Decision-Maker will prepare a written decision and rationale, including the finding of responsibility or non-responsibility and, if applicable, the sanction and rationale. The Complainant and Respondent will receive simultaneous written notification of the outcome (typically via e-mail to each party’s HCC e-mail address) from the Title IX Coordinator, which will include:

* Identification of the allegations potentially constituting Prohibited Conduct;
* 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;
* Findings of fact supporting the determination;
* Conclusions regarding the application of the Policy to the facts;
* A statement of, and rationale for, the result as to each alleged Policy violation, including a determination regarding responsibility, any disciplinary sanctions, and whether remedies designed to restore or preserve equal access to the College’s education program or activity will be provided to the Complainant; and
* The procedures and permissible bases for the Complainant and Respondent to appeal.
* The Title IX Coordinator will also document individual remedies provided to the Complainant and other steps the College took or will take to eliminate a hostile environment, if one is found to exist. That documentation may be provided to the Complainant and/or respondent as appropriate.

1. Sanctions and Remedies—Sanctioning can vary according to the relationship (student, faculty, or staff) that the respondent has with the College. If the Complainant is a student, the Decision-Maker will make sanctioning recommendations based on sanctions described in the Student Code of Conduct. The recommendation will be sent to the Dean of Student Services for final approval. If the respondent is a faculty member or staff member, the Decision-Maker will make sanctioning recommendations. The recommendation will be sent to the Human Resources Department for final approval. Sanctions may include anything from a warning, up to and including disciplinary expulsion or termination.

The College will also provide remedies to complainants found to have been subjected to conduct which violates the Policy. Remedies could include counseling, academic accommodations, academic support, and employment accommodations.

At the conclusion of the hearing, the Decision-Maker will determine whether there is sufficient information, by a Preponderance of the Evidence, to support a finding of responsibility for a violation(s) of the Policy. A Respondent is presumed to be not responsible for the alleged conduct unless and until a determination regarding responsibility is made at the conclusion of the resolution process. If a Respondent is found responsible, the Decision-Maker will determine the appropriate sanction(s) and may be given access to the Respondent’s discipline/criminal history for consideration.

The policy prohibits a broad range of conduct, all of which is serious in nature. In keeping with HCC’s commitment to foster an environment that is safe, inclusive, and free from discrimination and harassment, the Decision-Maker has great latitude in the imposition of sanctions tailored to the facts and circumstances of each report, the impact of the conduct on the Complainant and surrounding community, and accountability for the Respondent. Sanctions should support HCC’s educational mission.

In determining the appropriate sanction(s) and/or remedies, the Decision-Maker will consider a number of factors, including:

* the nature of the conduct at issue;
* the impact of the conduct on the Complainant;
* the impact or implications of the conduct on the HCC community;
* prior misconduct by the Respondent, including the Respondent’s relevant prior discipline history, both at HCC or another institution, and any criminal convictions, if such information is available and known;
* any expression of remorse or acceptance of responsibility by the Respondent;
* maintenance of a safe and respectful environment conducive to learning;
* protection of the HCC community;
* the necessity of any specific action in order to eliminate the prohibited Conduct, prevent its recurrence and remedy its effects on the Complainant or other HCC community members; and,
* any mitigating, aggravating or compelling circumstances in order to reach a just and appropriate resolution in each case.

The Decision-Maker may also consider restorative outcomes that, taking into account the safety of the HCC community as a whole, allow a Respondent to develop insight about their responsibility for the behavior, learn about the impact of the behavior on the Complainant and the community, and identify how to prevent or change the behavior. Sanctions may be issued individually, or a combination of sanctions may be imposed. Sanctions will typically be imposed immediately, although the Title IX Coordinator in consultation with the Dean of Students (if a student) or Executive Director of Human Resources (if an employee) may postpone sanctions pending an Appeal.

Sanctions and corrective actions for student Respondents include, but are not limited to, censure, disciplinary probation, restitution, suspension, expulsion, educational program attendance, educational project, professional assessment, transcript notation and/or notification to other institutions, and withholding or delaying the conferral of a degree.

Sanctions and corrective actions for employee Respondents include, but are not limited to, verbal or written warning, disciplinary probation, suspension, termination of employment, training, guidance, adjustment of supervisory or evaluative responsibilities, other reasonable sanctions and corrective actions, and measures to protect health and safety.

1. Appeals Panel—A decision reached by the Decision-Maker may be appealed by either party with notice to the Title IX Coordinator within five (5) business days of receiving the written determination. Such appeals shall be in writing and shall be delivered to the Title IX Coordinator.

The Title IX Coordinator 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 appeal will be assigned to a three-member Appeal Panel who 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.

Except as required to explain the basis of new information, an appeal shall be limited to a review of the verbatim record of the Title IX Hearing and supporting documents for one or more of the following purposes:

* A procedural irregularity that affected the outcome of the matter.
* To determine whether the hearing was conducted fairly in light of the charges and information presented, and in conformity with prescribed procedures giving the reporting party a reasonable opportunity to prepare and to present information that the Title IX policy was violated, and giving the responding party a reasonable opportunity to prepare and to present a response to those allegations. Deviations from designated procedures will not be a basis for sustaining an appeal unless significant prejudice results.
* To consider new information, sufficient to alter a decision, or other relevant facts not brought out in the original hearing, because such information and/or facts were not known to the person appealing at the time of the original living hearing. Failure to appear at a hearing and prepare and to present information, when appropriate notice was provided, will not be an acceptable reason for appeal.
* The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents or the individual complainant or respondent that affected the outcome of the matter.
* The sanctions were disproportionate to the conduct that the Respondent was found responsible for.

All grounds for appeal will be available to all parties.

The Appeal Panel members may not have served as the Advisor, Investigator or Hearing Panel Officer in the case.

The decision of the Appeal Panel is final.