

ADMINISTRATIVE PROCEDURES

Title: METHODS FOR PROCESSING SEXUAL HARASSMENT AND TITLE IX ALLEGATIONS	Identification: 2.12
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	Effective Date: 10/14/20
Authority: SBE 34 CFR 106 FS 1001.64; 1001.65	Signature/Approval: Dr. Ken Atwater

PURPOSE

This Administrative Procedure provides guidelines for how Hillsborough Community College (HCC) will respond to allegations and Complaints alleging sex discrimination including sexual harassment under the Title IX regulations.

PROCEDURE

HCC holds a longstanding institutional commitment to fostering equity, diversity and inclusion for work, learning, and business operations in which all individuals are treated with dignity care, and respect. HCC reaffirms the principle that students, faculty, staff, applicants for admission and employment, have a right to work and pursue education in an environment free of sexual discrimination, which includes sexual harassment. Further, HCC recognizes that such behavior can seriously undermine the atmosphere of trust and respect that is essential to a healthy work and academic environment.

Federal Title IX regulations apply to HCC employees, students and applicants for admission and employment related to allegations of sexual harassment that occur in HCC education programs and activities, whether such programs or activities occur on campus or off campus under limited circumstances. An education program or activity includes locations, events or circumstances over which HCC exercises substantial control over both the respondent and the context in which the sexual harassment occurred. Under the Title IX Regulations, prohibited sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

- An HCC employee conditioning educational or employment benefits on an individual's participation in unwelcomed sexual conduct (referred to as Quid Pro Quo).
- Unwelcome conduct that is determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a person equal access to an education program or activity (i.e., hostile environment).
- Sexual Assault (as defined by the Clery Act), or dating violence, domestic violence and stalking (as defined by the Violence Against Women Act).
- Sexual assault under the Clery Act is defined as rape, fondling, incest and statutory rape.

This Administrative Procedure provides guidelines for implementing the Title IX regulations for discrimination based on sex, which includes sexual harassment, as described in the Title IX regulations. For conduct that does not meet this definition of sexual harassment or conduct which occurs outside of the United States, HCC will address such conduct including Title VII related conduct through another HCC process which will include the Student Code of Conduct or disciplinary procedures for students and staff.

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- I. **DEFINITIONS**—When responding to sexual harassment, the following definitions apply:
- A. **Advisor:** Both the Complainant and the Respondent may select an advisor or request HCC assign an Advisor beginning with the Investigation and throughout the live Hearing and any appeals. An advisor will assist their party through these processes. An advisor can be but is not required to be an attorney. During the Title IX process, the Advisor will not speak or advocate for their party with the exception of being allowed to cross exam witnesses and the parties during the live hearing. However, an Advisor and their party to this process may confer throughout the Title IX process. An Advisor who violates the rules of decorum for their role in this procedure will not be permitted to continue to participate in the proceedings; may be asked to leave a live hearing/appeal and will no longer be permitted to participate in the process as an Advisor. Only one Advisor will be permitted to accompany a party to meetings/hearings, including meeting that occur by technology like Teams, Zoom, etc. Advisors provided by HCC are chosen from the HCC Grievance Pool.
 - B. **Complainant:** An individual who is alleged to be the victim of conduct that could constitute sexual harassment.
 - C. **Decision-Maker:** A Decision-Maker is responsible for handling the live hearing. This individual will review the record created by the Investigator and hear live testimony from the witnesses and the parties. The Title IX Coordinator will randomly select the Decision-Maker from the HCC Grievance Pool for the live hearing.
 - D. **Deliberate Indifference:** An institution acts with deliberate indifference only if the response to sexual harassment is clearly unreasonable in light of the known circumstances.

Under the regulations, HCC has an obligation to act reasonably in light of known circumstances and to meet these procedural guidelines which includes at a minimum to have a prompt response and to provide supportive measures to the Complainant.
 - E. **First Response and Supportive Measures:** Whenever the Title IX Coordinator receives a report about possible sexual harassment or misconduct—whether from the Complainant who was subject to the harassment or from anyone else—the Title IX Coordinator will contact the Complainant and immediately offer supportive measures.
 - F. **Formal Complaint:** A document filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that HCC investigate the allegation of sexual harassment. The Complainant must be a participant in an HCC educational program or activity at the time the Complaint is filed. A formal Complaint is required to initiate either an investigation and hearing process or the informal resolution process.
 - G. **Investigator:** This is the individual the meets with the parties and all witnesses to investigate the allegations of sexual harassment and to prepare the investigation report for the live hearing. The Title IX Coordinator will randomly select from the Grievance Pool a trained and impartial Investigator to conduct an investigation of the alleged conduct and will notify the parties who has been appointed as the designated Investigator.
 - H. **Respondent:** An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

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- I. **Title IX Coordinator:** This is the individual responsible for coordination and response to all allegations of sexual harassment and to implementation of the Title IX regulations for HCC. The Title IX Coordinator will oversee this entire process.

II. **NOTICE—ACTUAL KNOWLEDGE AND ACCESSIBLE REPORTING**

The Title IX Coordinator, the Public Safety Office staff or an HCC Administrator or Supervisor with the authority to institute corrective measures who has been notified of allegations of sexual harassment has actual knowledge once notified. HCC has an obligation to investigate and address instances of known or suspected sexual harassment. HCC encourages all faculty and staff to report allegations of any form or discrimination, including sexual harassment to the Title IX Coordinator.

Examples of HCC responsible employees authority includes but is not limited to the President, Vice Presidents, Campus Presidents, Deans, Directors, Supervisors, Counselors, Department Chairs, and faculty and staff who serve as advisors to student groups.

Responsible employees and campus Public Safety Officers who have information or receive a report of sexual harassment or sexual misconduct must immediately notify the Title IX Coordinator and provide known details of an incident.

The Title IX Coordinator will promptly respond by initially contacting the Complainant to immediately offer supportive measures. Actual knowledge triggers an obligation to provide supportive measures promptly.

III. **CONFIDENTIALITY AND PRIVACY**

HCC values the privacy of students, faculty, staff, and other community members particularly related to allegations and incidents involving sexual harassment and sexual misconduct. The HCC community are encouraged to seek assistance without fear that the information provided will be shared. However, certain College employees are required to report and to disclose information on all allegations of Title IX Sexual Harassment to enable HCC to respond to these reports. HCC staff with knowledge of sexual harassment reports will protect an individual's privacy to the greatest extent possible and will only share information on a need-to-know basis.

Every effort is made by the College to preserve the privacy of reports of allegations of sexual harassment/discrimination. If a Complainant requests that their name or other personally identifiable information not be shared with a Respondent or determines they do not want to file a formal Complaint, the Title IX Coordinator will take this request into consideration while balancing this request with ensuring there is a safe environment without sexual harassment for the HCC community. If a Complainant chooses not to make a formal report with the Title IX Coordinator and/or with local law enforcement, the Title IX Coordinator will ensure that supportive measures will be provided, which includes community resources.

For the purpose of Title IX and this procedure, confidentiality and privacy have distinct meanings.

1. **Confidentiality:** Means that information shared with designated community professionals outside of HCC, or External Confidential Resources, will be disclosed only with the individual's express written permission. Confidentiality exists in the context of the laws that protect certain

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relationships including those who provide services related to medical care, mental health providers, counselors, attorneys and ordained clergy. These external resources will not share information about an individual (including whether that individual has received services) with anyone, including the College, without the individual's express written permission, unless there is a continuing threat of serious violence to the patient/client or to others, or there is a legal obligation to reveal such information (e.g., suspected abuse or neglect of a minor). The College provides students and employees with access to external resources that are available in the community. These resources are available on the [Equity Department webpage](#).

Privacy: Generally means that information related to a report within this procedure will be shared only with those College employees who need to know in order to assist in the active review, investigation, or resolution of the report. These individuals will be discreet and respect the privacy of

all individuals involved in the process. If the decision is made to pursue an investigation involving a Respondent, information related to the investigation including the investigation report will be shared with the Respondent.

IV. FIRST RESPONSE AND SUPPORTIVE MEASURES

- A. Supportive measures are required for each report of sexual harassment. The Title IX Coordinator is responsible for the following after receiving a report or allegations of sexual harassment by a Complainant or third party:
- To promptly contact the Complainant to discuss the availability of supportive measures.
 - To consider the Complainant's wishes with respect to supportive measures.
 - To inform the Complainant of the availability of supportive measures whether a Complaint is filed or not.
 - To explain to the Complainant the process for filing a formal Complaint.
- B. The Title IX Coordinator will ensure that during this process that no actions including disciplinary sanctions are imposed on the Respondent.
- C. Supportive measures offered should be designed to restore or preserve HCC's education programs and activities without unreasonably burdening the other party; to protect the safety of all parties and HCC's educational environment; and to deter sexual harassment.
- D. Supportive Measures may include, but are not be limited to:
- Class schedule adjustment.
 - Relocation to a different course section.
 - Change of seating within a classroom.
 - Counseling.
 - Extensions of deadlines or other course related adjustments.
 - Modifications of work or class schedules.

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- Escort services coordinated with Public Safety.
- Mutual restrictions on contact between the parties.
- Change in housing if parties reside at Hawks Landing.
- Leaves of Absence.
- Increased security and monitoring of certain campus areas.

The Title IX Coordinator will work directly with the Dean of Student Services and the Public Safety Office on implementing supportive measures. Where appropriate, the Dean will coordinate with the instructor for academic adjustments. If a Complainant was not provided with supportive measures, the Title IX Coordinator must document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

V. **PRESUMPTION OF NON-RESPONSIBILITY**

The Respondent will be presumed “not responsible” until the conclusion of the grievance process. The presumption from the Title IX regulations is intended to support the requirement that the Investigator and Decision-Maker serve impartially without prejudging the facts. However, HCC shall provide remedies to a Complainant whenever a Respondent is found responsible.

VI. **FORMAL COMPLAINT**

A formal Complaint is a document filed by either the Complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that HCC investigate the allegations. A Complainant may use the HCC Complaint Form or may submit a signed document alleging sexual harassment against a respondent. The Title IX Coordinator may determine that a formal Complaint will proceed to investigation even if the Complainant requests no investigation and no further action, when the allegations involve violent behavior, use of a weapon, pose a significant safety concern or there have been multiple reports involving the same Respondent. It may also be determined that further action is warranted to ensure the safety of the HCC community.

Once a formal Complaint has been filed, the Title IX Coordinator will provide both the Complainant and the Respondent with written notice of the allegations and explain the formal investigation process. HCC may not impose discipline on a Respondent without going through the grievance process except for an emergency removal as outlined below.

VII. **EMERGENCY REMOVAL OF RESPONDENTS FROM CAMPUS**

HCC is permitted to temporarily remove an individual from campus on an interim basis during the pendency of a Complaint in limited “emergency” circumstances where there is an immediate threat to physical health or safety. Before HCC can take this emergency measure, however, Title IX Coordinator is responsible for the following:

- A. To undertake, in collaboration with the HCC Threat Assessment Team, an individualized safety and risk analysis to determine whether there is an immediate threat to the physical health or safety of any person arising from the allegations of sexual harassment.

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- B. Upon finalizing the individualized safety and risk analysis, to make an affirmative determination that such an immediate threat exists based on the individualized safety and risk analysis.
- C. To provide the Respondent with notice and an opportunity to challenge the emergency decision immediately following the Respondent's removal.

For all student matters, the Title IX Coordinator will work with the Dean of Student Services concerning the emergency removal of a student, including student applicant matters.

For all employee matters, the Title IX Coordinator will work directly with the Executive Director of Human Resources for all personnel issues. HCC may place an employee on administrative leave during the pendency of a Complaint. Whether such leave is paid or unpaid is at HCC's discretion.

VIII. WRITTEN NOTICE OF ALLEGATIONS

The Title IX Coordinator will provide written notice of the allegations to all known parties upon receipt of a formal Complaint of sexual harassment.

The written notice must include sufficient detail of the allegations (including the identities of the parties involved, the relationship between the parties if applicable, the conduct that is allegedly sexual harassment, and the date and location of the alleged incident) to permit parties to prepare for an initial interview. The Title IX Coordinator will inform the parties that they may have an Advisor of their choice and may inspect and review evidence obtained during the investigation. The Title IX Coordinator will assign an Advisor if the Complainant or Respondent requests one or they may select their own Advisor.

At a minimum, the written notice must include:

- A. A statement outlining the allegations and the identities of the parties.
- B. A statement regarding the relationship between the Complainant and Respondent.
- C. A statement outlining the right to an Advisor.
- D. A statement indicating the right to review evidence.
- E. A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility will be made at the conclusion of the grievance process.
- F. A statement informing the parties of any provision of the HCC Student Code of Conduct/College procedure, including the provision entitled Disruptive Conduct that prohibits intentionally furnishing false information to the College or intentionally withholding requested information.
- G. A statement of non-retaliation for reporting or otherwise participating in the sexual harassment and Title IX grievance process.

IX. INFORMAL RESOLUTION

The Title IX Coordinator may utilize the informal resolution process but only after a formal Complaint

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has been filed. This process does not require a full investigation and adjudication and may involve conflict resolution strategies such as mediation or restorative justice.

The Title IX Coordinator generally has discretion as to when an informal resolution may be offered; however, an informal resolution process cannot be used where the allegations in the formal Complaint allege that an employee sexually harassed a student.

Before proceeding with an informal resolution process, both parties must provide voluntary, informed, written consent. Additionally, the Title IX Coordinator must provide written notice to the parties disclosing the allegations, circumstances that preclude the parties from resuming a formal Complaint, the requirements of the informal resolution process, any consequences for participating in the informal resolution process (for example, what information, if any, will be considered confidential) and records that will be maintained that could be shared.

Any party may withdraw from the informal resolution process and resume the grievance process and proceed with the formal Complaint at any point prior to agreeing to a resolution with written notice to the Title IX Coordinator.

X. **DISMISSAL OF FORMAL COMPLAINT**

The Title IX Coordinator will dismiss a formal Complaint in certain circumstances if the conduct alleged in the formal Complaint:

- Would not constitute sexual harassment even if proven.
- Did not occur in the institution's education program or activity.
- Did not occur against a person in the United States.

Additionally, a Complaint may be dismissed if:

- The Complainant notifies the Title IX Coordinator in writing that the Complainant wishes to withdraw the formal Complaint or allegations.
- The respondent is no longer enrolled at HCC or employed by HCC.
- Specific circumstances prevent HCC from gathering evidence sufficient to reach a determination regarding responsibility.

The Title IX Coordinator must provide the parties with written notice of a dismissal, whether mandatory or discretionary, and the reason(s) for the dismissal.

Dismissal of the formal Complaint under Title IX does not preclude action under another HCC policy or procedure whether student, employee or applicant.

XI. **FORMAL GRIEVANCE POOL**

The HCC Title IX Formal Grievance Process uses a pool of HCC faculty and staff that are annually trained to serve as Investigators, Advisors, Decision-Makers or for the appeal for the Title IX process. As needed, the Title IX Coordinator will randomly select an employee to serve either an Investigator, Advisor, or Decision-Maker for a particular Complaint. If a party elects to appeal the Decision-Maker finding, The Title IX Coordinator will select an Appeal chair to hear the appeal.

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XII. INVESTIGATION

HCC will only conduct an investigation with a signed Complaint by either the Complainant or the Title IX Coordinator. In this case, the Title IX Coordinator will not be the Complainant or party during the grievance process and will remain free from bias and conflicts.

- A. A Complainant's wishes with respect to whether the College investigates the allegations will be respected. However, the Title IX Coordinator retains discretion to initiate a formal investigation.
- B. The Title IX Coordinator will assign the Complaint to an Investigator to conduct the investigation.
- C. The Investigator is responsible for investigating the allegations, while the Title IX Coordinator is responsible for overseeing the entire process from investigation through any appeals. HCC may not impose discipline on a Respondent without going through the grievance process.
- D. During the investigation, the parties are entitled to the following:
 - The parties will be allowed to have an Advisor of their choosing present at any meeting or grievance proceeding. HCC is permitted to establish restrictions regarding the extent to which the Advisor may participate in the proceedings, so long as the restrictions apply equally to both parties.
 - The parties will have access to all evidence gathered during an investigation that is directly related to the allegations raised in a formal Complaint. The parties will have an equal opportunity to present witnesses, including both fact and expert witnesses and other witnesses to allow each party to respond prior to the conclusion of the investigation.
 - HCC will not restrict the parties' ability to discuss the allegations or gather and present evidence.
 - The parties will receive written notice from the Title IX Coordinator a minimum of ten (10) days in advance of any meeting, interview, or hearing conducted as part of the respective investigation or adjudication process in which they are expected or invited to participate.
 - HCC cannot access or rely upon any treatment records maintained by a healthcare provider, including any HCC may have through disability services, unless the party provides written consent.
- E. Expectations of Both Parties
 - Review Policy/Forward Questions—Both the Complainant and the Respondent are expected to review this Process and timely forward any questions or concerns to the Title IX Coordinator.
 - Retain All Potentially Relevant Information—Both parties are expected to retain and not destroy all potentially relevant information in their possession.
 - No Retaliation—Both parties are expected to adhere to the College's prohibition against retaliation throughout the process.

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F. Investigation Process

- In addition to reviewing any documents submitted by the Complainant and Respondent, the Investigator will also review other records, which may be directly related to the allegations raised in the formal Complaint, including, but not limited to documents, Public Safety Department Incident Reports, police records, electronic or other record of communications between the parties or witnesses or records or other potentially relevant information. In seeking to obtain such evidence, the Investigator will comply with applicable laws and College policies.
- The Investigator may visit sites or locations of potential relevance to the allegations in the Complaint and record observations through written or photographic. The Complainant and the Respondent will have the opportunity to be interviewed (separately) by the Investigator. The Investigator may offer the parties the opportunity to participate in more than one interview.
- The Investigator will make a good faith effort to contact and interview any witnesses, including those persons no longer at the College or who may not have any affiliation with the College. The parties will have the opportunity to provide witness names to the Investigator. The Investigator may also interview any other individual believed to have relevant information. The Investigator will inform each witness or other individuals interviewed that they are prohibited from retaliating against the Complainant and Respondent or other witnesses.
- All witnesses who provide statements to the Investigator are expected to participate in the hearing on the matter. The Title IX Coordinator, or designee, will notify all witnesses of the date, time, and location of the hearing and offer each witness an opportunity to meet to discuss the Title IX Grievance Process.
- The Investigator may contact any expert the Investigator determines is necessary to ascertain the facts related to the Complaint or other information the Investigator determines is necessary to assist a Decision-Maker in determining whether it is more likely than not that the Respondent is responsible for the allegations in the Complaint. The parties may, but are not required, to identify expert witnesses who they believe will assist the Decision-Makers in determining whether it is more likely than not that the Respondent is responsible for the allegations in the Complaint.

XIII. ALLEGATIONS THAT DO NOT MEET THE DEFINITION OF SEXUAL HARASSMENT

HCC will investigate sexual harassment allegations included in any signed formal Complaint. However, if the allegations in a formal Complaint do not meet the definition of sexual harassment as described in this procedure and the regulations, or did not occur in the school's education program or activity against a person in the United States, the allegations of sexual harassment will not proceed under this Administrative Procedure.

The Title IX Coordinator will dismiss the allegations for purposes of Title IX and the guidelines outlined in this procedure if the allegations do not meet the definition of sexual harassment. However, the Title IX Coordinator may elect to address the allegations under other HCC processes such as the College's Student Code of Conduct or for those involving personnel, other appropriate forums such as the Collective Bargaining Agreement or HCC administrative procedures through the Human Resources Department.

XIV. REVIEW OF EVIDENCE

Before concluding the investigation, HCC will provide the parties and their Advisors equal opportunity

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to inspect and review any evidence obtained during the investigation that “is directly related to the allegations raised in a formal Complaint,” even if HCC will not rely on that evidence in reaching a determination.

All evidence must be included. The evidence must be provided to the parties in an electronic format or a hard copy, and the parties must be given at least ten (10) days to submit a written response, which the investigator must consider before the completion of the investigative report.

Evidence that is directly related may at times include a broader array of evidence than the evidence that is relevant.

HCC has the burden of gathering evidence sufficient to reach a determination regarding responsibility, while neither the e Complainant or the Respondent are required to meet this burden.

XV. INVESTIGATIVE REPORT

At the conclusion of the investigation, the Investigator must create an investigative report that summarizes relevant evidence. The report must not contain an analysis of the evidence, nor a determination of whether or not the alleged offenses violate HCC’s sexual harassment and Title IX policy or procedures. The Investigator must send to the parties and their Advisors, the investigative report at the same time in an electronic format or a hard copy for their review and written response. The final investigative report must be provided at least ten (10) days before any hearing to each part and their advisor so the parties have time to review and provide written responses.

XVI. LIVE HEARING—THE GRIEVANCE PROCESS

HCC will hold live hearings for formal Complaints of sexual harassment. The live hearing must be overseen by a Decision-Maker. The Decision-Maker will be selected randomly by the Title IX Coordinator from the Grievance Pool and will have no conflict of interest or bias. The Decision-Maker is trained on such topics as how to serve impartially, issues of relevance (including how to apply the rape shield protections provided for Complainants), and any technology to be used at the hearing.

The hearings may be conducted with all parties present physically or virtually, so long as the technology enables the participants to see and hear one another in real time. This means parties may not participate solely by telephone. At the request of either party, HCC must permit the parties to be in separate rooms during the live hearing.

HCC will create an audio or audiovisual recording of any live hearing and make it available to the parties for review. This recording is available to assist any party who wishes to file an appeal.

The Title IX Coordinator will ensure that the Grievance Process has established prompt time frames for concluding the formal grievance process and for concluding appeals and where applicable informal resolution options. At a minimum, the grievance process, through appeals must be resolved within sixty (60) calendar days after allegations were reported with exceptions made due to temporary delays and limited extensions as determined by the Title IX Coordinator. However, the Title IX Coordinator will endeavor to ensure that grievance, any appeal and where applicable, informal resolutions are handled and responded to as promptly as possible.

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XVII. DUE PROCESS REQUIREMENTS

The grievance process for resolving formal Complaints of sexual harassment is required to be transparent. A Decision-Maker must not only review the record created by the Investigator, but also hear live testimony from the witnesses that the Investigator relied on in preparing the Investigative Report. The Decision-Maker cannot rely on the statement of any witness who is unwilling to be present and to submit to cross-examination by the Advisors appointed to represent the Complainant and the Respondent. Although this evidence cannot be relied upon in making a determination for Title IX purposes, HCC can be held accountable for knowledge of this same evidence when liability is assessed under Title VII and state and local law.)

During any HCC grievance process for sexual harassment allegations, the following guidelines will be followed:

- A. HCC will have the burden of proof.
- B. There will be a presumption of innocence through the entire process. Students and employees accused of misconduct must be presumed innocent until proven guilty. Pre-hearing accommodations cannot place a heavier burden on the Respondent than on the Complainant.
- C. The Decision-Maker will use a preponderance of evidence standard of evidence. Under this evidentiary standard, the burden of proof will be met when the evidence demonstrates to the Decision-Maker that there is a greater than 50% chance that the allegations are true. The conclusion will be based on facts that are more likely true than not.
- D. The Decision-Maker will determine the relevance of questions as the questions are made and make an immediate determination if a question is not relevant and should not be answered.
- E. The hearing will provide an opportunity to test the credibility of the parties and witnesses through cross examinations conducted by each party's Advisor (not the individual parties) at the hearing.
- F. If a party or a witness does not attend the hearing or submit to cross examination, no statement from that party or witness will be admissible at the hearing even if the party or witness made a statement or admission during the investigation. The Decision-Maker will not consider the statement of a party or witness who does not attend the hearing in determining whether a violation of policy has occurred.

XVIII. CROSS-EXAMINATION BY ADVISORS

Every witness at the formal hearing will be subjected to cross-examination by the parties' Advisor. A party's Advisor is allowed to directly and in real time present all relevant questions and follow up questions to another party or witness. This expressly includes the ability of an Advisor to challenge the credibility of a party.

Cross-examination must come from a party's Advisor and may not come directly from a party.

While parties still have the right to have an Advisor of their choosing to be present throughout the Title IX process, all parties are required to have an Advisor at the live hearing for the purpose of

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conducting cross-examination. Other than cross examination, the Advisor is only able to counsel their party at the hearing.

Police reports, sexual assault nurse examiner (SANE) reports, medical reports, and other documents and records may not be relied on to the extent they contain the statements of a party or witness who has not submitted for cross-examination.

If the evidence is a text exchange or an email thread and one party refused to submit to cross-examination, but the other does not, the Decision-Maker may rely only upon the statements made by the party who was cross-examined. However, the Decision-Maker can rely on a description of the words allegedly used by a respondent if they constitute part of the alleged sexual harassment at issue because the verbal conduct does not constitute the making of a factual assertion to prove or disprove the allegations of sexual harassment.

While the individual's statements may not be relied upon, the Decision-Maker cannot draw any inference 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.

XIX. QUESTIONS MUST BE RELEVANT

Questions posed to parties and witnesses at the live hearing must be relevant. Before a Complainant, Respondent or witness answers a cross-examination or other question, the Decision-Maker must determine whether the question being asked is relevant and provide an explanation as to any decision to exclude a question as not relevant. Submission of written questions for the purpose of ascertaining the relevance of the question in advance does not comply with the regulations.

Questions relating to a Complainant's prior sexual behavior are deemed not relevant, unless the questions are offered to prove someone else was responsible for the alleged conduct or offered to prove consent.

XX. WRITTEN DETERMINATION

The Decision-Maker will issue a written determination. The written determination must include a determination of responsibility, as well as a written finding of facts.

- The determination must clearly state the conclusion regarding whether the alleged conduct occurred as alleged or at all and support each conclusion with the rationale relied upon, including a determination regarding responsibility.
- The written determination will indicate the disciplinary sanctions imposed on the Respondent and delineate the remedies provided to the parties and whether remedies are designed to restore or preserve equal access to HCC's educational programs or activities will be provided to the Complainant by the college.
- The determination must include an identification of an allegations of sexual harassment; the procedural steps taken from receipt of the formal Complaint through determination including notifications, interview of parties/witnesses, site visits, methods used to collect evidence and the hearings held; findings of fact supporting the determination; conclusions regarding application of the college sexual misconduct policy to the facts.

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- The determination must be sent simultaneously to the parties, along with information to both parties regarding the process of filing an appeal and the bases for an appeal.

XXI. APPEALS

HCC will provide for appeals equally to both parties from determinations regarding responsibility or from an HCC's dismissal of a formal Complaint or any allegation contained in a formal Complaint. The Title IX Coordinator will randomly select an appeal chair from the Grievance Pool to hear the Appeal. The appeal process must:

- Notify the other party when an appeal is filed and implement appeal procedures equally for both parties.
- Decision-Maker for appeal cannot be the Hearing Decision-Maker or Investigator.
- Decision-Maker for appeal must have no bias or conflict of interest.
- Provide both parties a reasonable and equal opportunity to submit a written statement either supporting or challenging the outcome.
- Issue a written decision indicating the results of the appeal and the rational and provide the decision to both parties simultaneously.

A party may appeal on the following grounds:

- A. Procedural irregularity that affected the outcome.
- B. New evidence that was not reasonably available when the determination of responsibility was made that could affect the outcome.
- C. The Title IX Coordinator, Investigator, or Decision-Maker had a general or specific conflict of interest or bias against the Complainant or Respondent that affected the outcome.

HCC is permitted to allow additional grounds for appeal but must do so equally for Complainant and Respondent.

XXII. RETALIATION

HCC prohibits retaliation against any individual for exercising their rights under Title IX, including participating in or refusing to participate in the filing of a Complaint, the investigation or any proceeding or hearing.

Examples of prohibited retaliation include intimidation, threats, coercion, or discrimination and specifically include bringing charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment but are based on the same facts or circumstances as a report or Complaint of sex discrimination or sexual harassment.

Exercising rights protected under the First Amendment does not constitute retaliation. Similarly, charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding does not constitute retaliation. However, punishing a party for making false statements in the course of the grievance process would constitute retaliation where the conclusion that false statements were made is based solely on the determination regarding responsibility.

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XXIII. RECORD-KEEPING

The Title IX Coordinator must create and maintain for seven (7) years, records of any actions (including any supportive measures) taken in response to a report or formal Complaint of sexual harassment. The Equity Department must document the basis for its conclusion that its response was not deliberately indifferent and document that it has taken measures designed to restore or preserve equal access to the institution's education program or activity. These records also include all documents from the initial report, the investigation and report, hearing recordings or transcripts through an appeal, including any informal resolution. In addition, all materials used to train the Title IX Coordinator, Investigator, Decision-Makers and any person who facilitates an informal resolution process must be kept for the same timeframe.

XXIV. TRAINING

All Title IX personnel which includes the Grievance Pool will have annual training on:

- The definition of sexual harassment under Title IX.
- HCC's Title IX Sexual Harassment procedure.
- The scope of HCC's education program or activity.
- How to conduct an investigation and grievance process, including hearings, appeals, and informal resolution process, as applicable.
- How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest and bias.

Materials used in training should avoid sex stereotypes.

Investigators and Decision-Makers must receive training on issues of relevance, including how to apply the rape shield protections provided only for Complainants.

The Title IX Coordinator will publish all training materials on the [Equity Department webpage](#).

History: New