

PRINCIPLES AND PROCEDURES FOR TITLE IX HEARINGS

PRE-HEARING GUIDE

Case Name and Symplicity Case No.:	
Investigator Name:	
Investigator Name:	
Investigation Dates:	
Date of Hearing:	
Location/Time of Hearing:	
Hearing Decision-maker Name:	

The purpose of this guide is to provide information to all parties regarding the live hearing scheduled in the above-referenced case. Included below is information and expectations for before, during, and after the hearing.

BEFORE THE HEARING

- Evidence is collected during the investigative process and has been made available to the Complainant, Respondent, and their Advisors for review and comment at least ten (10) days prior to the hearing. **New evidence (evidence not gathered and considered during the investigative phase) may not be introduced during the live hearing. Likewise, new witnesses (who have not been interviewed by the investigators) are not permitted at the hearing.**
- Parties shall report to the assigned location at the respective college campus indicated in the Notice of Hearing.
- Participation at the hearing is mandatory. If a party does not attend, the hearing will continue without them and the decision will be made absent their interview statements/testimony.

DURING THE HEARING

- Thoroughness and fairness are the primary foci of any Title IX hearing process. Hearings are generally scheduled for two (2) hours, but can be extended, as needed, at the discretion of the Decision-maker, to ensure that both parties are able to present the information relevant to their position. (e.g., complicated fact pattern, numerous witnesses, etc.).
- The Decision-maker, or the Hearing Facilitator--at the request of the Decision-maker--will begin the hearing with an introduction of all parties in the hearing. The introduction will consist of the full name of the participant, followed by the role they will play at the hearing. The introduction will be made on the record and will consist of introduction of the following participants:
 - Decision-maker
 - Complainant
 - Respondent
 - Advisor
 - Title IX Coordinator
 - Hearing Facilitator
 - Investigators
- **Decorum /etiquette expectations**
 - All parties are expected to be civil and not engage in behavior that violates collegial standards, such as talking over someone, yelling, taking an aggressive stance towards someone (i.e., shaking a fist or standing too close to someone's face), or any other behavior that is deemed disruptive by the Decision-maker.
 - Parties may not interrupt any testimony or cross-examinations being conducted.
 - The Complainant, Respondent, and their Advisors shall be allowed to attend the entire portion of the live hearing.
 - Witnesses are only allowed to attend during the time the credibility of their evidence is being reviewed; however, all witnesses will need to be available during the entire hearing.
 - Advisors are not to disrupt the proceedings by making an opening or closing statement or by advising their advisee to refuse from answering questions.
- **Location / Access to the Live Hearing**
 - The live hearing will take place virtually and recorded using WebEx Meeting. The link to access the live hearing will be set-up by the hearing facilitator on-site at the beginning of the hearing.
 - All parties must be physically on-campus at the respective college, unless otherwise approved by the Title IX Coordinator. Such approvals will only be granted due to extenuating circumstances.
 - Each party will be located in a separate room / office with a computer with a webcam and microphone. The Complainant and Respondent will be in the same room / office with their Advisor.

- o The Title IX Coordinator and investigators shall be in the same room as the Decision-maker.

- o The Hearing Facilitator (and possibly support staff) will be available on-site to launch the live hearing and provide support during the hearing.
- o Federal Title IX Regulations require that all parties be able to see and hear each other, so at no point may any party shut off their microphone or video during the hearing, with the exception of breaks approved by the Decision-maker.
- o Use of personal audio/video recording devices is not permitted during the hearing. In the case that either party appeals the Decision-maker's determination or otherwise wishes to review the recording of the hearing, they may make a request to do so with the Title IX Coordinator. The time period to request inspection and review of the hearing recording is five (5) business days after the hearing.

HEARING PROCEDURES

At the hearing, the Decision-maker has the authority to hear and make determinations on all allegations of harassment and/or retaliation and may also hear and make determinations on any additional alleged policy violations that have occurred in concert with the harassment and/or retaliation, even though those collateral allegations may not specifically fall within the Title IX Sexual Harassment Policy (A.R. 5.1.16).

Participants at the hearing will include the Decision-maker, the Hearing Facilitator, the Investigator(s), the Parties, Advisors to the parties, any witnesses, and anyone providing authorized accommodations or assistive services, if necessary.

The Decision-maker will answer all questions of procedure. Anyone appearing at the hearing to provide information will respond to questions on their own behalf.

The Decision-maker will allow witnesses who have relevant information to appear at a portion of the hearing in order to respond to specific questions from the Decision-maker and the parties and will then be excused.

Hearings will not last longer than two (2) hours.

Hearing Introductions and Explanation of Procedure

The Decision-maker explains the procedures and introduces the participants. The hearing, recording, witness logistics, party logistics, curation of documents, separation of the parties, and other administrative elements of the hearing process are managed by a non-voting Hearing Facilitator appointed by the Title IX Coordinator. The Hearing Facilitator may attend to: logistics of rooms for various parties/witnesses as they wait; flow of parties/witnesses in and out of the hearing space; ensuring recording and/or virtual conferencing technology is working as intended; copying and distributing materials to participants, as appropriate, etc.

Investigator Presents the Final Investigation Report

The Investigator(s) will then present a summary of the final investigation report, including items that are contested and those that are not, and will be subject to questioning by the Decision-

maker and the parties (through their Advisors). The Investigator(s) will be present during the entire hearing process, but not during deliberations.

Neither the parties nor the Decision-maker should ask the Investigator(s) their opinions on credibility, recommended findings, or determinations, and the Investigators, Advisors, and parties will refrain from discussion of or questions about these assessments. If such information is introduced, the Decision-maker will direct that it be disregarded.

Testimony and Questioning

Once the Investigator(s) present their report and are questioned, the parties and witnesses may provide relevant information in turn, beginning with the Complainant and Complainant's witnesses and then the Respondent and Respondent's witnesses. The P/witnesses will submit to questioning by the Decision-maker and then by the parties through their Advisors ("cross-examination").

All questions are subject to a relevance determination by the Decision-maker. The Advisor will pose the proposed question orally and then the proceeding will pause to allow the Decision-maker to consider it, and the Decision-maker will determine whether the question will be permitted, disallowed, or rephrased.

The Decision-maker may explore arguments regarding relevance with the Advisors, if the Decision-maker so chooses. The Decision-maker will then state their decision on the question for the record and advise the party/witness to whom the question was directed, accordingly. The Decision-maker will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

The Decision-maker will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Decision-maker has final say on all questions and determinations of relevance, subject to any appeal. The Decision-maker may consult with legal counsel on any questions of admissibility. The consultation shall occur during a short hearing break during which time the 2-hour clock is stopped. The Decision-maker may ask Advisors to explain why a question is or is not relevant from their perspective, but will not entertain arguments from the Advisors on relevance once the Decision-maker has ruled on a question.

Refusal to Submit to Cross-Examination and Inferences

The Decision-maker will disregard that statement. Evidence provided that is something other than a statement by the party or witness may be considered.

If the party or witness attends the hearing and answers some cross-examination questions, only statements related to the cross-examination questions for which the party or witness participated may be considered in the final determination of responsibility. The Decision-maker may rely on any statements gathered during the investigatory process.

The Decision-maker may not draw any inference solely from a party's or witness's absence from the hearing or refusal to answer cross-examination or other questions.

If charges of policy violations other than sexual harassment are considered at the same hearing, the Decision-maker may consider all evidence it deems relevant, may rely on any relevant statement.

If a party-provided Advisor refuses to comply with the rules of decorum, MCCCCD will provide that party with a different Advisor to conduct cross-examination on behalf of that party.

Recording Hearings

Hearings (but not deliberations) are recorded by MCCCCD for purposes of review in the event of an appeal. No phones or electronic devices with or without audio/visual recording capabilities are permitted at the hearing. The parties may not record the proceedings and no other unauthorized recordings are permitted.

Access to the hearing recording (but not a copy of the recording) will be made available to both parties within five (5) business days after the conclusion of the hearing. Parties may request access to view the recording from the Title IX Coordinator within the time period to submit an appeal. The recording will be archived by MCCCCD for seven (7) years, or as required by federal regulations and records retention regulations.

TEMPLATE FOR ORDER OF THE HEARING

The Decision-maker will begin by explaining the procedures and introducing the participants. The Investigator(s) will then present a summary of the final investigation report, including items that are contested and those that are not, and will be subject to questioning by the Decision-maker and the parties (through their Advisors). Once the Investigator(s) present their report and are questioned, the parties and witnesses may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the Decision-maker. The parties/witnesses will submit to questioning by the Decision-maker and then by the parties through their Advisors ("cross-examination").

HEARING ATTENDEES

- Decision-maker (Hearing Chair): [Decision-maker Name]
- Hearing Facilitator(s): [Hearing Facilitator(s) Names]
- Investigator(s): [Investigator(s) Names]

- Complainant: [Complainant Name]
- Complainant's Advisor: [Complainant Advisor Name]
- Respondent: [Respondent's Name]
- Respondent's Advisor: [Respondent Advisor's Name]
- Witness: [Witness Name - Add a new line for each witness]

ADVISOR ROLE:

Each party may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present for cross-examination. If a party arrives to the hearing without an Advisor, the Title IX Coordinator will appoint one. Each party must have an Advisor present to conduct cross-examination. There are no exceptions. Should your Advisor change from what is listed above prior to hearing, please notify the Title IX Coordinator as soon as you have a new Advisor.

IMPACT STATEMENTS:

Each party may submit a written impact statement before the hearing to the Decision-maker for review during any sanction determination. This statement can be submitted directly to the Title IX Coordinator to distribute to the Decision-maker. Impact statements cannot be read aloud in the hearing.

The Decision-maker will ensure that each of the parties has an opportunity to review any impact statement submitted by the other party(ies). The Decision-maker may--at their discretion--consider the statements, but they are not binding.

ACCOMMODATIONS:

If any party or witness requires disability accommodations, language assistance, and/or interpretation services for the hearing, please contact the Title IX Coordinator at least seven (7) business days prior to the hearing.

DETERMINATIONS OF RESPONSIBILITY:

The Decision-maker will deliberate alone to determine, by a preponderance of the evidence, whether the Respondent is responsible or not responsible for the policy violation(s) in question. The deliberation period is not to exceed five (5) days. The Decision-maker may consider the previously submitted party impact statements in determining appropriate sanction(s), when there is a finding of responsibility as to one or more of the allegations.

The Decision-maker will then prepare a written Deliberation Statement and deliver it to the Title IX Coordinator, detailing the determination, rationale, the evidence used in support of its determination, the evidence disregarded, credibility assessments, and any sanctions. This report typically should not exceed three (3) to five (5) pages in length and must be submitted electronically to the Title IX Coordinator within two (2) business days of the end of

deliberations, unless the Title IX Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will notify the parties in writing of the extension.

NOTICE OF OUTCOME:

Using the deliberation statement, the Title IX Coordinator will prepare a Notice of Outcome, which shall include the final determination, rationale, and any applicable sanction(s). The Title IX Coordinator will then provide the Notice of Outcome to the parties and their Advisors within five (5) business days of receiving the Decision-maker's deliberation statement. The Notice of Outcome must be shared with the parties simultaneously. Notification will be made in writing and will be mailed to the local or permanent address of the parties as indicated in official MCCCCD records, or emailed to the parties' MCCCCD-issued email or otherwise approved account. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

APPEALS:

Any party may file a Request for Appeal by submitting such a request in writing to the Title IX Coordinator within five (5) days of the delivery of the Notice of Outcome Letter. Once the five (5) days have passed, the matter will be deemed closed.

The request for appeal will be forwarded to the Provost or Chief Academic Officer for the MCCCCD, acting as the Appeal Chair, for consideration to determine if the request meets the grounds for appeal.

Grounds for Appeal

Appeals are limited to the following grounds:

- (A) Procedural irregularity that affected the outcome of the matter;
- (B) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- (C) An allegation that the Title IX Coordinator, Investigators, or Decision-maker had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter.

The Appeal Chair will deny any request for appeal that does not meet the grounds in this Policy and will notify the parties and their Advisors in writing of the denial and the rationale. Denials based on lack of grounds shall be communicated to the requesting party within five (5) days of the request for appeal being received by the Appeal Chair.

If any of the grounds in the Request for Appeal meet the grounds in this Policy, then the appeal chair will:

1. Notify the other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the investigators and/or the original Decision-maker.
2. Provide the other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker a copy of the appeal request with the approved grounds outlined.
3. Provide the other party(ies) and their Advisors, the Title IX Coordinator, and when appropriate, the investigators and/or the original Decision-maker five (5) days to submit a response to the portion of the appeal that was approved and involves them.
4. Collect any additional information needed and all documentation regarding the approved grounds and the subsequent responses and render a decision in no more than fifteen (15) days from the date the Request for Appeal was filed, barring exigent circumstances. All decisions apply the preponderance of the evidence.
5. Prepare a Notice of Appeal Outcome letter and send it to all parties simultaneously, which includes the decision on each approved ground and rationale for each decision. The Notice of Appeal Outcome letter will also outline specific instructions for remand or reconsideration of any sanction imposed by the Decision-maker, which MCCCCD is permitted to share according to state or federal law.

The Notice of Appeal Outcome letter will be mailed to the local or permanent address of the parties as indicated in official institutional records and emailed to the parties' MCCCCD-issued email or otherwise approved account. Notice is presumed to have been made once the letter is emailed.