

Title IX: Hearing Officer Training 2020



Scope

Training for hearing officers conducting live hearings at JCCC of a formal complaint of Sexual Harassment as defined by the Sexual Harassment Policy 650.00 and the Sexual Harassment Operating Procedure 650.01.

- This training assumes that the hearing officer has participated in formal training regarding the 2020 Title IX regulations.



Sexual Harassment Policy 650.00



Applicability and Purpose

- **Applicability:** This Policy applies to all persons at Johnson County Community College (“JCCC” or “College”) participating or attempting to participate in the College’s education program or activity, including students and employees.
- **Purpose:** This Policy prohibits students and employees from engaging in Sexual Harassment.



Definitions

- “**Sexual Harassment**” means conduct on the basis of sex that satisfies one or more of the following:
- An employee conditioning the provision of an aid, benefit, or service of the College on an individual’s participation in unwelcome sexual conduct (i.e., quid pro quo); or
- Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the College’s education program or activity; or
- Sexual Assault (as defined in the Clery Act), Dating Violence, Domestic Violence, or Stalking (as defined in the Violence Against Women Act (VAWA)).



Statement and Reports

Statement

- JCCC is committed to maintaining a positive and safe learning and working environment and prohibits Sexual Harassment and related retaliation. JCCC students and employees have responsibility in this.

Reports

- Directs students and employees to reports procedure in Sexual Harassment Complaint Operating Procedure 650.01.
- Knowing and reckless false report or information regarding Sexual Harassment is a policy violation.
- Violates will result in discipline.



Sexual Harassment Operating Procedure 650.01



Definitions

- “**Actual Knowledge**” means notice of Sexual Harassment or allegations of Sexual Harassment to any individual with a Duty to Report as provided in this Operating Procedure.
- “**Complainant**” means an individual who is alleged to be the victim of prohibited conduct.
- “**Respondent**” means an individual who has been reported to be the perpetrator of prohibited conduct.
- “**Preponderance of the Evidence**” means the evidence shows that it is “more likely than not” that College policy was violated.



I. Grievance Process - Reporting

A. Duty to Report

- **Mandatory Reporters:** All Supervisors
- **Permissive Reporters:** All other individuals who have been subjected to Sexual Harassment by a student or employee or have direct knowledge

B. Reporting Process

- Title IX Coordinators:
- For students: Paul Kyle, Dean of Student Services and Success, and Pam Vassar, Assistant Dean of Student Life
- For employees: Colleen Chandler, Director of Human Resources, and Julie Vivas, Manager of Employee Relations
- **Form of the Report.** May be written or verbal.
- **JCCC Ethics Report Line.** Title IX Coordinators will enter reports into the JCCC Ethics Report System.
- **False or Malicious Reports.** It's a violation of College policy for any individual to knowingly file a false or malicious complaint of Sexual Harassment.



II. Jurisdiction, Timing, Criminal Proceedings

Jurisdiction

- The College will promptly respond under this Operating Procedure when it has Actual Knowledge of alleged Sexual Harassment allegedly caused by an individual
- (1) participating in or attempting to participate in the College's education program or activity at the time of the alleged Sexual Harassment; and
- (2) against a person in the United States.

Timing and Availability of Procedures

- Individuals are encouraged to report alleged Sexual Harassment immediately
- Parties and participants are expected to provide truthful testimony
- Due dates under this Operating Procedure shall be calculated based upon calendar days. If the due date specified falls on a weekend or holiday, the next business day will be the due date for the action.
- While the College will make every attempt to comply with these deadlines, reasonable extensions possible.

Effect of Criminal Proceedings

- Report or complaint under this Operating Procedure is independent of any criminal proceeding.
- Conduct may constitute Sexual Harassment under the College's Policy and this Operating Procedure even if law enforcement agencies lack sufficient evidence of a crime and therefore decline to prosecute.



III. The Process: Initial Steps

A. Intake Meeting with Complainant

- Upon report, intake meeting with the Complainant to obtain information, identify process and provide supportive measures.
- Discuss possibility of formal complaint, if not filed

B. Formal Complaint

- In person, by mail or by email and must include the Complainant's physical or digital signature
- In some cases, a formal complaint may be filed by a Title IX Coordinator
- The Complainant may withdraw the formal complaint at any step in this process.

C. Notice

- Written notice of the formal complaint will be sent by Coordinator to both parties.

D. Intake Meeting with Respondent.

- Upon report, intake meeting with the Respondent to obtain information, identify process and provide supportive measures.



IV. Investigation

A. Investigator

- The Investigator is appointed by the Coordinator to conduct interviews, visit and photograph relevant sites; and, where applicable, coordinate with law enforcement to collect and preserve relevant documentation and other evidence.

B. Investigation Procedures

- The parties may provide the Investigator with a list of witnesses, relevant documents, and any other information they believe to be relevant to the Investigation on or before a date set by the Investigator.
- Parties and advisors will have the opportunity to review and inspect relevant evidence prior to the final investigative report.
- The Investigator shall summarize the factual findings in a report, typically within sixty (60) days from receipt of the complaint.
- Each party will have ten (10) days to provide a written response, desired.



V. Grounds for Dismissal

A. Mandatory Dismissal

- Title IX requires the Title IX Coordinator to dismiss the complaint, if (1) even if proved, the alleged behavior would not constitute Sexual Harassment; (2) the alleged behavior did not occur in the College's education program or activity; or (3) the alleged behavior did not occur against a person in the United States.

B. Permissive Dismissal

- The Title IX Coordinator may dismiss a formal complaint if (1) the Complainant requests the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein; (2) Respondent is no longer enrolled or employed by the College; or (3) specific circumstances prevent the College from gathering sufficient evidence to reach a determination as to the formal complaint or allegations therein.



VI. Resolution

A. Informal Resolution

- No live hearing
- May occur at any time prior to final resolution upon agreement of the parties

B. Formal Resolution

- Live Hearing
- Hearing Officer serves as the decision-maker.



VI. Live Hearing – Hearing Procedures

- In-person or by video conferencing technology that allows the parties to see and hear each other in real time.
- If the hearing is held in person, either party may request that the parties be in separate rooms with technology enabling the parties to see and hear questioning in real time.
- Recording or transcript will also be made.
- No opening or closing statements will be allowed.
- Each hearing shall consist of questioning of the witnesses by the hearing officer, followed by questioning of the witnesses by the parties.
- The Hearing Officer will set the time for direct and cross examinations of each witness, which shall be applied equally to both parties' witnesses.



VI. Live Hearing – Advisors

- Each party may select an advisor for support during the Formal Resolution process.
- If a party does not have an advisor prior to any live hearing, the College will allow the party to select an advisor from a panel of College-provided advisors.
- If a party does not appear at a hearing, the College will appoint an advisor for such party.
- The advisor's only purpose is to ask questions on their party's behalf in cross examination. As such, the advisor is not intended to have any specific legal knowledge and as such, shall have no expectation to provide substantive advice to the party.



VI. Live Hearing – Questioning

- Advisors' only role during the hearing will be to convey their party's questions to witnesses.
- Hearing Office must first rule on the relevancy of each proposed question.
- The Hearing Officer will provide an explanation of the ruling if a proposed question is not relevant.
- If relevant, the advisor may ask the question of a witness.
- The Hearing Officer may only consider statements made by a party or witness that have been subject to cross examination and will not draw an inference based on any party or witnesses' refusal to submit to cross examination.



VI. Live Hearing – Relevancy

- Hearing Officer will rule “relevant” or “not relevant” on each proposed question, document such rulings, and explain the rationale for any “not relevant” ruling. The Hearing Officer will consider:
 - Is the question probative of the question of responsibility?
 - It must focus on evidence pertinent to proving whether facts material to the allegations under investigation are more or less likely to be true.
 - Irrelevant questions include:
 - Questions about the Complainant’s sexual predisposition or prior sexual behavior, unless such evidence about the complainant’s prior sexual behavior is offered to prove that someone other than the Respondent committed the alleged conduct, or if the questions concern specific incidents of the Complainant’s prior sexual behavior with respect to the Respondent and are offered to prove consent.
 - Information protected by a legally recognized privilege.
 - Any party’s medical, psychological and similar records unless the party has given voluntary, written consent.
 - Questions that are duplicative or repetitive.



VI. Live Hearing – Refusal to Submit

- If a party or witness does not submit to cross-examination, the Hearing Officer may not rely on any statement of that party or witness in reaching a determination; provided, however that the Hearing Officer may not draw an inference about responsibility based solely on a party's or witness's absence from the hearing or refusal to answer cross-examination or other questions.
 - If the party makes a statement to another witness and the witness appears but party does not/refuses to submit to cross, the Hearing Officer cannot consider the party's statement, even if recounted by a witness who is cross-examined.
 - If a party refuses to cross examine, the statements of a party/witness may still be considered, as the party/witness has not refused to "submit"



VI. Live Hearing – Standard of Proof

- Evidence of alleged Sexual Harassment will be evaluated under the “**Preponderance of the Evidence**” standard.
- Hearing begins with the presumption that the Respondent is not responsible.
- In the context of a review of the Investigators’ investigative report and witness testimony at the live hearing, the Respondent will only be found to be responsible for the alleged Sexual Harassment if the Hearing Officer concludes that such Sexual Harassment more likely than not occurred based upon careful review of all information presented.

VI. Live Hearing - Questions for the Hearing Officer to Decide

- Did the prohibited conduct occur as alleged?
- If the conduct did occur, does that conduct violate the College's policy?
- If the policy was violated, what is the appropriate action to remedy the effects of the conduct and prohibit its recurrence?



VI. Live Hearing – Final Outcome and Sanctions

Final Outcome

- No more than ten (10) days after the hearing, the Hearing Officer will make a determination and prepare a Final Outcome Letter.
- The Final Outcome Letter shall be provided to both parties and must contain (1) findings of fact; (2) conclusion on whether the conduct occurred; (3) rationale for conclusion; (4) any disciplinary sanctions; and (5) any remedies for the Complainant.
- The Hearing Officer shall consult with the appropriate Dean or Director of Human Resources regarding appropriate discipline.

Sanctions

- Discipline occurs in accordance with the Student Disciplinary Action Policy 319.02 or Suspension, Demotion and Termination Policy 415.08, as applicable.
- Past violations of College policies and procedures may be considered.
- The purpose of the discipline will be to (a) bring an end to the violation, (b) reasonably prevent recurrence, and (c) remedy the effects.



VI. Live Hearing –Sanctions

Student Disciplinary Action Policy 319.02

- Warning
- Probation
- Suspension
- Expulsion

Suspension, Demotion and Termination Policy 415.08

- Warning
- Suspension
- Demotion
- Expulsion



VII. Appeals – Grounds for Appeal

Either party may appeal on the basis of:

- (1) procedural irregularity that affected the outcome of the matter;
- (2) 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
- (3) the Title IX Coordinator, Investigator, or Hearing Officer had a conflict of interest or bias for or against the Complainant or Respondent generally or the individual Complainant or Respondent that affected the outcome of the matter.



VII. Appeals – Process

- **Where:** if a student, to the Office of the Vice President of Student Success & Engagement, or if an employee, to the Office of the Vice President of Human Resources
- **When:** within ten (10) business days of the date the Final Outcome Letter or notice of dismissal is delivered.
- **How:** in writing; must describe in detail the grounds for appeal.
- Reviewing Officer (either Vice President or designee) will review statements from the parties, formal complaint, any investigative report, supporting evidence, any hearing transcript or recording, any notice of dismissal or Final Outcome Letter.
- If the alleged basis for appeal affected the outcome, then the Reviewing Officer will put the parties on notice of such determination, will allow for such basis to be corrected as appropriate (which may include allowing for additional witness statements and/or documentation in certain circumstances).
- Initial Ruling made within fourteen (14) business days of the date the appeal is submitted.
- The Reviewing Officer, if not the Vice President, shall provide the Initial Ruling to the Vice President with the Reviewing Officer's factual findings, and within thirty (30) days of the date of the appeal, the Vice President will make a Final Ruling/Determination.



Hearing Script Review

Questions?

