

Sex Discrimination Policy (“Title IX”)

Non-Discrimination Notice

Harrisburg Area Community College (“HACC”) does not discriminate on the basis of sex and prohibits sex discrimination in all education programs or activities that the College operates—including admission and employment—as required by Title IX of the Educational Amendments Act of 1973 (“Title IX”) and its implementing regulations.

Inquiries about Title IX may be referred to the College’s Title IX Coordinator, the U.S. Department of Education’s Office for Civil Rights, or both. HACC’s Title IX Coordinator is Dr. Armenta Hinton. Her office is located in the Ted Lick Building, Room 112, and she can be contacted via email at ahinton@hacc.edu. She can also be contacted by phone (717.780.4102, internal extension 214102).

You may use the College’s website to report information about conduct that may constitute sex discrimination or make a complaint of sex discrimination under Title IX: <https://www.hacc.edu/AboutHACC/InclusionandDiversity/Title-IX.cfm>.

The College’s Title IX grievance procedure can be found on that same website. The grievance procedure describes alternative methods for lodging a complaint of sex discrimination.

Grievance Procedures for Complaints of Sex Discrimination

HACC has adopted the following grievance procedures that provide for prompt and equitable resolution of complaints made by students, employees, or other individuals who are participating or attempting to participate in the College’s education programs or activities, or by the Title IX Coordinator, alleging any action that would be prohibited by Title IX or the Title IX regulations.

Definitions

The following definitions apply to the use of these terms in this policy:

- College: Means Harrisburg Area Community College (“HACC”).
- Student: means a person who has gained admission to the College.

- Faculty Member: Any individual hired by the College to conduct teaching activities or whom the College otherwise considers a member of the faculty. For the purpose of this policy, the term “faculty” does not include any individual who would qualify for the definition of a student.
- College official: Includes any individual employed by the College, performing assigned administrative or professional responsibilities.
- College property: Includes all land, buildings, facilities, and other property in the possession of or owned, leased, used, or controlled by the College (including adjacent streets and sidewalks).
- Complainant: An individual alleged to be the victim of conduct that could constitute sex discrimination, as that term is defined in this policy.
- Respondent: An individual who has been reported to be the perpetrator of conduct that could constitute sex discrimination.
- Complaint: An oral or written request to the College that can be objectively understood as a request for the College to investigate and make a determination about alleged discrimination under Title IX or the Title IX regulations.
- Sex discrimination: Discrimination on the basis of sex under the College’s education programs or activities, which causes more than a minimal level of harm. As stated above, the College prohibits sex discrimination in all of its education programs or activities. Sex discrimination prohibited by the College includes discrimination on the basis of gender, sex stereotypes, sex characteristics, pregnancy or related conditions, parental or marital status, sexual orientation, or gender identity.¹
- Pregnancy-or related conditions: Means (1) pregnancy, childbirth, termination of pregnancy, or lactation; (2) medical conditions related to pregnancy, childbirth, termination of pregnancy, miscarriage, or lactation; or

¹ For more information regarding the College’s prohibition on gender identity discrimination, please consult Shared Governance Policy 507, *Gender Acknowledgement and Accommodations*.

(3) recovery from pregnancy, childbirth, termination of pregnancy, miscarriage, or lactation.

- Under the College's education programs or activities: HACC's prohibition against sex discrimination applies to all sex discrimination occurring under the College's education programs or activities in the United States. Conduct that occurs "under the College's education programs or activities" includes, (1) all conduct that occurs on campus or on any other College property or other property owned, controlled, managed, or used by the College, (2) conduct occurring in any building owned or controlled by a student organization that is officially recognized by the College, and (3) conduct that is subject to the College's disciplinary authority, including conduct occurring at clinical sites as part of the College's clinical education programs. Conduct may be covered by this policy even when some conduct alleged to be contributing to a hostile environment occurred outside the College's education programs or activities, provided that the conduct that did not occur under the College's education programs or activities contributes to an alleged sex-based hostile environment under the College's education programs or activities.
- Sex-based harassment: A form of sex discrimination, which means sexual harassment and other harassment on the basis of sex (including harassment on the basis of pregnancy or related conditions, sexual orientation, and gender identity) if it is "*quid pro quo* harassment," "hostile environment harassment," "sexual assault," "dating violence," and "stalking," as those terms are defined in this policy.
- Quid pro quo harassment: A College employee, agent, or other person authorized by the College to provide an aid, benefit, or service under the College's education programs or activities, explicitly or implicitly conditions the provision of such an aid, benefit, or service on the individual's participation in unwelcome sexual conduct.
- Hostile environment harassment: Unwelcome conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the College's education programs or activities. Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

- The degree to which the conduct affected the complainant's ability to access the College's education programs or activities;
 - The type, frequency, or duration of the conduct;
 - The parties' ages, roles within the College's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;
 - The location of the conduct and the context in which the conduct occurred; and
 - Other sex-based harassment in the College's education program or activity.
- Sexual assault:
 - Any anal or vaginal penetration of another against that person's will or without that person's consent;
 - Any oral penetration of another by a sexual organ against that person's will or without that person's consent;
 - Any insertion of another's genitals into another's mouth, anus, or vagina against that person's will or without that person's consent;
 - Any attempt to make or the making of physical contact with another for the purpose of sexual gratification, against that person's will or without that person's consent; or
 - The use of physical force, coercion, intentional impairment, or threat of harm to commit any of these acts.
 - Coercion: Occurs when a sexual initiator engages in sexually pressuring or oppressive behavior that causes the behavior's target to engage in unwanted sexual behavior.
 - Domestic violence: A felony or misdemeanor crime committed by a person who,
 - Is a current or former spouse or intimate partner of the victim under Pennsylvania's family or domestic violence laws;
 - Is similarly situated to a spouse of the victim;
 - Shares a child in common with the victim;
 - Is cohabitating with or has cohabitated with the victim as a spouse or intimate partner; or

- Commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction where the actions take place.
- Dating violence: Violence committed by a person,
 - Who is or has been in a social relationship of a romantic or intimate nature with the alleged victim; and
 - Whether such relationship existed must be determined by taking into consideration the following factors:
 - The relationship's length;
 - The relationship's type; and
 - The frequency of interaction between the persons involved in the relationship.
- Stalking: Engaging in a course of conduct directed at a specific person that would cause a reasonable person to,
 - Fear for his, her, or their safety or the safety of others; or
 - Suffer substantial emotional distress.

Examples of conduct qualifying as stalking include,

- Following a person without proper authority, under circumstances that a reasonable person would believe demonstrate an intention to cause physical harm or emotional distress to the person being followed; and
- Repeatedly communicating with a person under circumstances that a reasonable recipient of such communications would believe demonstrate an intention to cause physical harm or emotional distress to the recipient of such communications.
- Retaliation: Intimidation, threats, coercion, or discrimination against any person by the College, a student, or an employee or other person authorized by the College to provide an aid, benefit, or service under the College's education programs or activities, for the purpose of interfering with any right or privilege secured by Title IX or provided by this policy, or because the individual has made a report or complaint, testified, assisted, participated, or refused to participate in any manner in an investigation, proceeding, or

hearing regarding sex discrimination allegations, which includes participation in this policy's grievance procedures and informal resolution process.

- Supportive measures: Non-disciplinary, non-punitive individualized services offered—as appropriate, and if reasonably available, and without fee or charge—to the complainant or respondent before or after a complaint has been received by the College or if no complaint has been filed. Such measures are designed to restore or preserve equal access to the College's education programs or activities and to provide support during the grievance procedures described in this policy. "Supportive measures" may include the following:
 - Counseling services;
 - Deadline extensions or other course-related adjustments;
 - Modifications of schedules for work, class, or extracurricular or other activity, regardless of whether there is or is not a comparable alternative;
 - Campus escort services;
 - Restrictions on contact applied to one or more parties;
 - Changes in working conditions;
 - Leaves of absence;
 - Increased security and monitoring of certain campus areas;
 - Training and education programs related to sex-based harassment; and
 - Other similar measures.

These same supportive measures are available for complaints alleging sex-based harassment, regardless of whether or not a student is involved.

The College will maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the College's ability to provide supportive measures. The Title IX Coordinator is responsible for coordinating effective implementation of supportive measures.

- Title IX Coordinator: The College official responsible for coordinating implementation and compliance with this policy and Title IX. Currently, the College's Title IX Coordinator is:

Armenta Hinton, Ph.D.

Vice President of Engagement, Retention, and Inclusion and Title IX
Coordinator

One HACC Drive

Ted Lick Building, Room 112

Harrisburg, PA 17110

Email: ahinton@hacc.edu

Telephone: 717-780-2312, internal extension 212312

The following College employees serve as Deputy Title IX Coordinators for
the College:

For Complaints Related to Allied Health (Students and Employees)

Vicki Van Hise, MSW

Assistant Vice President for Holistic Support and Engagement

Deputy Title IX Coordinator

1641 Old Philadelphia Pike

Main 332

Lancaster, PA 17602

Email: vlvanhis@hacc.edu

Telephone: 717-358-2972, internal extension 312972

For Complaints Related to Workforce Development (Students and
Employees)

Krystal Turner-Childs

Director, Police Academy

Industrial Road, Harrisburg PA 17110

Email: Kmturne5@hacc.edu

Telephone: 717-780-2300, internal extension 217212

For Complaints Involving Students (Other than Allied Health Students and
Workforce Development)

Courtney Allen, Ph.D.

Director of Community Standards & Student Engagement

Deputy Title IX Coordinator

Office of Diversity, Inclusion, and Belonging

2010 Pennsylvania Avenue

York, PA 17404

Email: caallen@hacc.edu

Telephone: 717-780-3279, internal extension 213279

For Complaints Involving Employees and Other Non-Students (Other than Allied Health and Workforce Development)

Olajiwon McCadney

Assistant Vice President of Diversity and Intercultural Affairs

One HACC Drive

Bruce E. Cooper Student Center, Room 204

Harrisburg, PA 17110

Email: okmccadn@hacc.edu

Telephone: 717-780-2613

Either the Deputy Title IX Coordinators or the Title IX Coordinator may serve as the investigator for allegations of violation of this policy. The Title IX Coordinator also has the power to delegate such tasks, including to the College's legal counsel, when the College deems that necessary and appropriate. Likewise, if the Title IX Coordinator and the Deputy Title IX Coordinator have a conflict of interest or prohibited bias in a particular matter, then the College may appoint an Interim Deputy Title IX Coordinator for that particular matter. In that situation, all references to the Title IX Coordinator in this policy refer to the Interim Deputy Title IX Coordinator with respect to the particular matter for which the Interim Deputy Title IX Coordinator has been appointed.

The College will provide the Title IX Coordinator's contact information to all applicants for admission or employment, and to all students and employees.

- Adjudicator: The person responsible for making the decision regarding whether the respondent is responsible or not responsible for violating the College's prohibition against sex discrimination. The Title IX Coordinator or the relevant Deputy Title IX Coordinator may serve as the adjudicator and the adjudicator may be the same person who investigates the allegation unless the investigator has a prohibited conflict of interest or bias that would prevent him/her/them from serving in an impartial manner. The Title IX Coordinator may also appoint another person to serve as the adjudicator and/or investigator, including an attorney for the College, provided that (1) such person has received the training to serve as a decisionmaker as required under the U.S. Department of Education's Title IX regulations, and (2) the selected person does not have a conflict of interest or bias that would prevent him/her/them from serving in an impartial manner.

- Disciplinary Sanction or Remedy: Requirements imposed on a respondent found responsible for violating the College's prohibition against sex discrimination. Any such sanction or remedy imposed through the grievance procedures must be designed to restore or preserve the complainant's equal access to the College's education programs or activities and may include supportive measures. The scope of permissible sanctions or remedies are discussed later in this policy.
- Appeal Officer: The College's Assistant Vice President for Student Engagement and Belonging will normally serve as the appeal officer. The appeal officer may not serve as the adjudicator in the same case. If a conflict of interest arises, another member of the Cabinet will be appointed by the Title IX Coordinator to serve as the appeal officer, provided that person has received the training required of an appeal decisionmaker under the Title IX regulations. If all Cabinet members have a conflict of interest or bias that would prevent them from serving impartially, then the Title IX Coordinator may select another person, including an attorney for the College, to serve as the appeal officer.
- Informal Resolution Officer: Means the person appointed by the Title IX Coordinator to facilitate the informal resolution process. Any person designated as an informal resolution officer must be appropriately trained regarding the informal resolution process's rules and practices, how to serve impartially, including by avoiding conflicts of interest and bias. Likewise, no person may serve as an informal resolution officer if that person has a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.
- Preponderance of the Evidence: Evidence demonstrating that it is more likely than not that a violation of the College's prohibition on sex discrimination has occurred. The College will apply the preponderance of the evidence standard when evaluating whether a violation of the College's prohibition on sex discrimination has occurred.
- Advisor: A person who assists a student or employee who is a party to a grievance procedure regarding allegations of sex-based harassment involving a student. Both the complainant and the respondent in such cases are entitled to be accompanied and assisted by an advisor during any investigation or meeting regarding allegations of sex-based harassment

involving a student. Advisors, however, are not permitted to speak directly on behalf of a party during any meeting conducted pursuant to this policy. Subject to the restrictions listed in this section below, the advisor may be anyone who the party believes will help him/her/them during the investigation, hearing, and appeal of allegations of sex-based harassment involving a student. By having an advisor accompany a party to a meeting conducted under this policy, that party is authorizing the College to disclose that party's FERPA-protected information² to the selected advisor for the purposes of this policy. Parties may select an attorney as an advisor. The parties, however, must provide advanced notice to the Title IX Coordinator regarding the participation of any attorney-advisor. That way, the College will be able to determine whether to have its own legal counsel participate in any investigation or meeting during which one or more of the parties have opted to use an attorney as their advisor. The party's selected advisor must abide by the rules of any meeting set by the investigator, informal resolution officer, or adjudicator. The Title IX Coordinator may prohibit an advisor from participating in any aspect of the grievance process under this policy if the advisor fails or has failed to comply with the Rules of Decorum or the restrictions on advisor participation, as judged by the Title IX Coordinator. Likewise, the Title IX Coordinator may impose additional requirements on the participation of an advisor who the Title IX Coordinator determines has violated the Rules of Decorum, provided such requirements are designed to ensure compliance with the Rules of Decorum. Likewise, an adjudicator or informal resolution officer may order the removal of an advisor during the course of any meeting conducted by the adjudicator or informal resolution officer in accordance with this policy upon a finding that the advisor has failed to comply with the Rules of Decorum. The College will not provide an advisor for any party who does not have an advisor. The parties are responsible for obtaining their own advisors.

The following individuals may not serve as an advisor:

- The Title IX Coordinator;
- Any investigator who has assisted the College in investigating the complaint at issue;
- Any informal resolution officer who has assisted the College during the grievance process related to the complaint at issue;
- Legal counsel for the College;

² "FERPA" is the Family Educational and Privacy Act, 20 U.S.C. § 1232g.

- Any witness who provides information during the grievance process related to the complaint at issue;
 - Any support person for any party to the complaint at issue;
 - The adjudicator for the complaint at issue;
 - The appeal officer; and
 - Any other individual who the Title IX Coordinator, the adjudicator, the informal resolution officer, or appeal officer determines has a conflict of interest or bias.
- Support Person: A person, other than an advisor, whose presence provides support to a party throughout the Title IX process. Complainants and respondents are entitled to be accompanied by one support person of their choosing in meetings and other proceedings related to the investigation and grievance procedures. Witnesses are not entitled to be accompanied by a support person, although the investigator or adjudicator may permit a witness to be accompanied by a support person upon a showing of good cause. By way of examples, the support person may be a family member, a friend, a faculty member, a staff member, or an attorney. The following may not serve as a support person: the Title IX Coordinator; the investigator; the adjudicator; or any other individual who the adjudicator or investigator determines has a conflict of interest. A support person may do any of the following: provide emotional support and reassurance throughout the grievance procedures; observe meetings; assist with clarifying the grievance procedures; take notes; and quietly prompt or advise a party to request a break in the proceedings when necessary. A support person must understand and maintain the privacy of the parties and witnesses as much as possible and will be required to execute a non-disclosure agreement as a condition of their participation in the grievance procedures. A support person may not engage in any of the following conduct: make a presentation on behalf of a party or otherwise represent a party's interest during the grievance process, including by questioning witnesses; speak for a party or answer questions on a party's behalf; advocate for a party or a party's interest; or obstruct or distract from the grievance process. Support persons must also comply with the Rules of Decorum.
 - Consent: A knowing and voluntary agreement to engage in specific sexual activity at the time of the activity. To be valid, consent must be knowing, voluntary, active, present, and ongoing. Consent must also be clear and unambiguous, expressed in mutually understandable words or actions. Individuals should keep the following principles in mind:

- Consent may be expressed verbally or nonverbally.
 - Consent may be withdrawn at any time.
 - An individual may consent to certain sexual activities, but not others.
 - The College will consider all relevant circumstances of the relationship between the parties when determining whether consent has occurred. But the fact that an individual has previously engaged in consensual sexual activities does not mean that all future sexual activities automatically qualify as consensual.
 - A person who is incapacitated is unable to consent to sexual activity.
- Incapacity, incapacitated, and incapacitation: These terms refer to a person who is unable to consent to sexual activity. Individuals are unable to consent to sexual activity if they are mentally incapacitated, cognitively limited, unconscious, or incapacitated due to the use of alcohol or other drugs. Likewise, an individual may be incapacitated due to the person's age. For example, individuals who are under the age of 14 are unable to consent to sexual activity under any circumstances. Similarly, individuals who are ages 14 and 15 are unable to consent to sexual activities with individuals who are at least four years older than they are. When alcohol is involved, incapacitation is a state beyond drunkenness or mere intoxication. When drug use is involved, incapacitation is a state beyond being under the influence of or impaired by the use of the drug. Alcohol and other drugs affect each individual differently. Determining whether an individual is incapacitated requires an individualized determination. When determining whether a person has the capacity to provide consent, the College will consider whether a sober and reasonable person in the same circumstances would have known that the other party could or could not consent to sexual activity.

Complaints

The following people have a right to make a complaint of sex discrimination, including complaints of sex-based harassment, requesting that HACC investigate and make a determination about alleged discrimination under Title IX:

- A “complainant,” which includes the following individuals:
 - A student or employee of HACC who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX; or

- A person other than a student or employee of HACC who is alleged to have been subject to conduct that could constitute sex discrimination under Title IX at a time when the individual was participating or attempting to participate in HACC's education programs or activities.
- A parent, guardian, or other authorized legal representative with the legal right to act on behalf of a complainant; or
- HACC's Title IX Coordinator.

In certain situations, the Title IX Coordinator may decide to initiate a complaint of sex discrimination even in the absence of a complaint lodged by a student, employee or other alleged victim, or if the complaint is withdrawn by the complainant. To determine whether to initiate a complaint of sex discrimination under those circumstances, the Title IX Coordinator will consider the facts of each specific case, taking into account, at a minimum, the following factors:

- The complainant's request not to proceed with initiation of a complaint;
- The complainant's reasonable safety concerns regarding initiation of a complaint;
- The risk that additional acts of sex discrimination would occur if a complaint is not initiated;
- The severity of the alleged discrimination, including whether the discrimination, if established, would require the removal of a respondent from campus or the imposition of another disciplinary sanction to end discrimination and prevent its recurrence;
- The age and relationship of the parties, including whether the respondent is an employee of the recipient;
- The scope of the alleged sex discrimination, including whether the available information suggests a pattern, ongoing sex discrimination, or sex discrimination that has affected multiple individuals;
- The availability of evidence to assist the adjudicator in determining whether sex discrimination occurred; and
- Whether the College could end the alleged sex discrimination and prevent its recurrence without initiating its grievance procedures under this policy.

The Title IX Coordinator may initiate a complaint if, after consideration of these and other relevant factors, it is determined that the conduct in question presents an imminent and serious threat to the health or safety of the complainant or other person, or that the conduct as alleged would prevent the College from ensuring equal access on the basis of sex to its education programs or activities. If a

complaint will be initiated under these circumstances, then the Title IX Coordinator will notify the complainant prior to doing so and appropriately address reasonable concerns about the complainant's safety or the safety of others, including by providing supportive measures.

The Title IX Coordinator is not required to initiate the grievance procedures if, upon being notified of conduct that may constitute sex discrimination, the Title IX Coordinator reasonably determines that the alleged conduct could not constitute sex discrimination under Title IX or this policy.

HACC may consolidate complaints of sex discrimination against one or more respondent, or by more than one complainant against one or more respondent, or by one party against another party, when the allegations of sex discrimination arise out of the same facts or circumstances. When more than one complainant or more than one respondent is involved, references in this policy to a party, complainant, or respondent include the plural, as applicable.

Regardless of whether a complaint is initiated, the College will take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the College's education programs or activities.

Reporting Allegations

Any individual may make a good faith report alleging violation of the College's prohibition against sex discrimination.

All College employees must notify the Title IX Coordinator when the employee has information about conduct that reasonably may constitute prohibited sex discrimination, which includes sex-based harassment.

When a student, or person who has a legal right to act on behalf of a student, informs any HACC employee of a student's pregnancy or related condition, the informed employee must promptly provide the informing person with the Title IX Coordinator's contact information and inform that person that the Title IX Coordinator can coordinate specific actions to prevent sex discrimination and ensure the affected student's equal access to HACC's education programs or activities.

Title IX Grievance Procedures for Allegations of Sex Discrimination Generally

HACC will treat complainants and respondents equitably.

HACC requires that any Title IX Coordinator, investigator, or adjudicator not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.

HACC presumes that the respondent is not responsible for the alleged sex discrimination unless and until a determination of responsibility is made at the conclusion of the Title IX grievance procedure.

HACC has established the following timeframes for the major stages of the grievance procedures:

- The evaluation process will conclude no later than ten business days after the Title IX Coordinator is made aware that a complaint of sex discrimination has been made to the College. During the evaluation process the Title IX Coordinator will determine whether to dismiss or investigate a complaint of sex discrimination;
- The investigation process will conclude no later than 40 business days after the Title IX Coordinator is made aware that a complaint of sex discrimination has been made to the College;
- The determination of responsibility/non-responsibility will be issued no later than 50 business days after the Title IX Coordinator is made aware that a complaint of sex discrimination has been made to the College; and
- The appeal process, if any, will conclude no later than 65 business days after the Title IX Coordinator is made aware that a complaint of sex discrimination has been made to the College.

A party may request an extension of these deadlines by providing a written request to the Title IX Coordinator. Likewise, the Title IX Coordinator is permitted to extend these deadlines. Any extension of these deadlines, however, will only be granted upon good cause shown in light of the facts of that particular situation. Any extension of these deadlines must be in writing and provided to all parties to the grievance process.

HACC will take reasonable steps to protect the privacy of the parties and witnesses during its grievance procedures. Such steps, however, will not restrict the ability of the parties to obtain and present evidence. Specifically, parties are always permitted to speak with witnesses, consult with their family members, consult with confidential resources, consult with their advisor or support person, or otherwise

prepare for or participate in the grievance procedures. The parties are prohibited from engaging in retaliation, including against witnesses.

HACC will objectively evaluate all evidence that is relevant and not otherwise impermissible—including both inculpatory and exculpatory evidence.³ Credibility determinations—that is, determinations about whether a party or witness is believable—will not be based on a person’s status as a complainant, respondent, or witness.

The following types of evidence, and questions seeking such evidence, are impermissible and will not be accessed or considered (unless for the sole purpose to determine whether one of the exceptions below applies). Such evidence also will not be disclosed and will not otherwise be used during the grievance procedures, regardless of whether relevant:

- Evidence that is protected under a privilege recognized by federal or state law or evidence, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
- A party’s or witness’s records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to that party or witness, unless the College obtains the party’s voluntary, written consent for the use of these materials during the grievance procedures; and
- Evidence that relates to the complainant’s sexual interests or prior sexual conduct, unless such evidence is offered to prove that someone other than the respondent committed the alleged conduct or if the evidence is about specific incidents of the complainant’s prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the complainant and the respondent does not by itself demonstrate or imply the complainant’s consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

Notice of Allegations

³ “Inculpatory evidence” is evidence which suggests that the respondent is responsible for the alleged sex discrimination. “Exculpatory evidence” is evidence which suggests that the respondent is not responsible for the alleged sex discrimination.

Upon initiation of HACC's Title IX grievance procedures, the Title IX Coordinator will notify the parties of the following:

- HACC's Title IX grievance procedures and its informal resolution process;
- Sufficient information available at the time to allow the parties to respond to the allegations, including the identities of the parties involved in the incident(s), the conduct alleged to constitute sex discrimination, and the date(s) and location(s) of the alleged incident(s);
- Retaliation is prohibited;
- The respondent is presumed not responsible for any alleged sex-based harassment until a determination is made at the conclusion of the grievance procedures. Prior to such a determination, the parties will have an opportunity to present relevant and not otherwise impermissible evidence to the adjudicator, who will be a trained and impartial decisionmaker;
- The parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence or an accurate description of this evidence. If only a description of the evidence is provided, the parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence upon the request of any party; and
- For allegations of sex-based harassment involving a student, the parties may have an advisor of their choice who may be, but is not required to be, an attorney accompany the party to any meetings or proceedings related to the Title IX grievance procedures.
 - The College will not limit the choice or presence of the advisor from the complainant or the respondent in any meeting or proceedings.
 - The College may establish restrictions regarding the extent to which the advisor may participate in these grievance procedures, as long as such restrictions apply equally to the parties.
- For allegations of sex-based harassment involving a student, all parties may have a support person present during any meeting or proceeding.

If, during the course of an investigation, HACC decides to investigate additional allegations of sex discrimination by the respondent toward the complainant that are not included in the notice provided or that are included in a complaint that is consolidated, HACC will notify the known parties of the additional allegations. If such allegations concern alleged sex-based harassment involving a student, the notice of additional allegations must be in writing.

Dismissal of a Complaint

The Title IX Coordinator may dismiss a complaint of sex discrimination in the following circumstances:

- HACC is unable to identify the respondent after taking reasonable steps to do so;
- The respondent is not participating in HACC's education programs or activities and is not employed by HACC;
- The complainant voluntarily withdraws any or all of the allegations in the complaint, the Title IX Coordinator declines to initiate a complaint, and HACC determines that, without the complainant's withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not constitute sex discrimination under Title IX even if proven; or
- HACC determines the conduct alleged in the complaint, even if proven, would not constitute sex discrimination under Title IX. Before dismissing the complaint, HACC will make reasonable efforts to clarify the allegations with the complainant.

Upon dismissal, HACC will promptly notify the complainant, in writing, of the basis for the dismissal. If the dismissal occurs after the respondent has been notified of the allegations, then HACC will also simultaneously notify the respondent in writing of the dismissal and the basis for the dismissal.

HACC will notify the complainant that a dismissal may be appealed and will provide the complainant with an opportunity to appeal the dismissal of the complaint. If the dismissal occurs after the respondent has been notified of the allegations, then HACC will also notify the respondent that the dismissal may be appealed. Any dismissal decision may be appealed on the following basis:

- Procedural irregularity that would change the outcome;
- New evidence that would change the outcome and that was not reasonably available when the dismissal decision was made; and
- The Title IX Coordinator, investigator, or adjudicator had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that would change the outcome.

If the dismissal decision is appealed, HACC will,

- Notify all parties of any appeal, including notice of the allegations, if such notice was not previously provided to the respondent,
- Implement appeal procedures equally for the parties,
- Ensure that the appeal officer did not take part in an investigation of the allegations or dismissal of the complaint,
- Ensure that the appeal officer has been trained consistent with the Title IX regulations,
- Provide the parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome, and
- Provide a written decision to the parties regarding the appeal’s result and the rationale for that result.

Any appeal of a dismissal decision will be decided by the appeal officer.

When a complaint is dismissed, HACC will, at a minimum,

- Offer supportive measures to the complainant, as appropriate,
- Offer supportive measures to the respondent, provided that the respondent has been notified of the allegations, and
- Take other prompt and effective steps, as appropriate, through the Title IX Coordinator, to ensure that sex discrimination does not continue or recur within HACC’s education programs or activities.

Emergency Removals and Administrative Leave

At any time following receipt of information suggesting that a violation of the College’s prohibition of sex discrimination may have occurred, the Title IX Coordinator, in conjunction with the College’s Executive Director of Campus Safety and Security, may remove a respondent—entirely or partially—from the College’s education programs or activities on an emergency basis, provided that the following has occurred:

- The Title IX Coordinator and Executive Director of Safety and Security have undertaken an individualized safety and risk analysis;
- The Title IX Coordinator and Executive Director of Safety and Security have jointly determined that the emergency removal is justified based on an imminent and serious threat to the health or safety of a complainant or any students, employees, or other persons arising from the allegations of sex discrimination; and

- The Title IX Coordinator provides the subject of the removal order with notice of the removal decision and an opportunity to challenge the decision immediately following the removal.
 - The subject of a removal order wishing to challenge that order must provide the Title IX Coordinator with written notice of such a challenge. The removed party bears the burden of demonstrating that the removal decision was incorrect.
 - The College’s Assistant Vice President of Student Engagement and Belonging will decide any challenges of a removal order issued to a student. Appeals regarding all other removal orders will be decided by the College’s Vice President of Human Resources and Organizational Development.

The College may place any employee on administrative leave from employment responsibilities during the pendency of the College’s Title IX grievance procedures.

Any emergency removal or administrative leave decision may be amended or cancelled during the pendency of the College’s Title IX grievance procedures.

Nothing in this section of the policy restricts any rights under the Americans with Disabilities Act,⁴ Section 504 of the Rehabilitation Act of 1973,⁵ or the Individuals with Disabilities in Education Act.⁶

Investigation

HACC will provide an adequate, reliable, and impartial investigation of complaints alleging sex discrimination.

HACC—not the parties—bears the burden of conducting an investigation that gathers sufficient evidence to determine whether sex discrimination has occurred.

HACC will provide an equal opportunity for the parties to present fact witnesses and other inculpatory or exculpatory evidence that is relevant and not otherwise impermissible.

⁴ 42 U.S.C. §12101 *et seq.*

⁵ 29 U.S.C. § 794.

⁶ 20 U.S. § 1400 *et seq.*

HACC will review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance.

HACC will provide each party with an equal opportunity to access the evidence that is relevant to the allegations of sex discrimination and not otherwise impermissible, in the following manner:

- HACC will provide an equal opportunity to access either the relevant and not otherwise impermissible evidence, or an accurate description of the evidence. If HACC provides a description of the evidence, the parties will be provided with an equal opportunity to access the relevant and not otherwise impermissible evidence upon the request of any party;
- HACC will provide a reasonable opportunity to respond to the evidence or the accurate description of the evidence; and
- HACC will take reasonable steps to present and address the parties' unauthorized disclosure of information and evidence obtained solely through the grievance procedures. Disclosures of such information and evidence for purposes of administrative proceedings or litigation related to the complaint of sex discrimination are authorized.

For allegations of sex-based harassment involving a student, HACC will provide the parties with the same opportunities to be accompanied to any meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney.

- HACC will not limit the choice or presence of the advisor for the complainant or respondent in any meeting or proceeding.
- HACC, however, may establish restrictions regarding the extent to which the advisor may participate in the grievance procedures, as long as the restrictions apply equally to the parties.

For allegations of sex-based harassment involving a student, evidence in the form of expert witness opinions may be permitted in appropriate cases. Such evidence will only be utilized in making a determination upon approval by the adjudicator and upon a showing that such evidence is relevant, not otherwise impermissible, and would substantially aid the adjudicator in making its determination regarding whether or not the respondent is responsible for the allegations of sex-based harassment involving a student. The adjudicator may refuse to permit the

submission of such expert witness evidence, or to consider such evidence, if the adjudicator determines that the probative value of the expert's opinion or evidence is outweighed by considerations of unfair prejudice or confusion of the issues, or if such evidence is merely duplicative of other evidence under consideration. These rules apply equally to the complainant and the respondent.

Questioning the Parties and Witnesses

HACC will provide a process that enables the adjudicator to question parties and witnesses to adequately assess a party's or witness's credibility, provided that credibility is both in dispute and relevant to evaluating one or more allegations of sex discrimination.

For allegations of sex-based harassment involving a student in which a party's or witness's credibility is both in dispute and relevant to evaluating the allegations, the College will allow each party to propose such questions that the party wants asked of any party or witness and have those questions asked by the adjudicator, provided that such questions are determined by the adjudicator to be both relevant and not impermissible. In such cases, the adjudicator will also be permitted to ask any such relevant and not otherwise impermissible questions that the adjudicator might have. These questions will be asked during individual meetings with a party or witness. Each party will be provided with an audio or audiovisual recording or transcript of any such questions and answers. That recording or transcript will be provided to the party with enough time for the party to have a reasonable opportunity to propose follow-up questions.

For allegations of sex-based harassment involving a student, the adjudicator will determine whether any proposed question is relevant and not otherwise impermissible before a question is posed and will explain any decision to exclude a question as not relevant or otherwise impermissible. Questions that are unclear or harassing of the party or witness will not be permitted. The adjudicator, however, must give a party an opportunity to clarify or revise a question that the adjudicator determines is unclear or harassing. If the party sufficiently clarifies or revises the question, then the question must be asked.

For allegations of sex-based harassment involving a student, the adjudicator may choose to place less or no weight upon statements by a party or witness who refuses to respond to questions deemed relevant and not impermissible. The adjudicator, however, must not draw an inference about whether sex-based

harassment occurred based solely on a party's or witness's refusal to respond to such questions.

Determination Regarding Whether Sex Discrimination Has Occurred

Following the investigation and evaluation of all relevant and not otherwise impermissible evidence, HACC will,

- Use the preponderance of the evidence standard of proof to determine whether the respondent is responsible for violating the College's prohibition against sex discrimination. The standard of proof requires the adjudicator to evaluate the relevant and not otherwise impermissible evidence for its persuasiveness.
- Notify the parties in writing of the determination regarding whether respondent is responsible or not responsible for violating the College's prohibition against sex discrimination. That written notice will include the rationale for the determination and the procedures and permissible bases for the parties to appeal.
- Refrain from imposing discipline on a respondent for sex discrimination unless and until a determination is made at the conclusion of the grievance procedures that the respondent is responsible for engaging in sex discrimination prohibited by this policy.
- If the respondent is found responsible for violating this policy, the Title IX Coordinator will, as appropriate,
 - Coordinate the provision and implementation of remedies to a complainant and other people whose access to HACC's education programs or activities has been limited or denied due to sex discrimination,
 - Coordinate the imposition of any disciplinary sanctions on the respondent, including written notification to the complainant of any such disciplinary sanctions, and
 - Take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within HACC's education programs or activities.
- Comply with the grievance procedures before the imposition of any disciplinary sanctions against a respondent.

The College may take disciplinary action against an individual for making a materially false statement in bad faith during the grievance procedures. But the College may not discipline a party, witness, or others participating in the grievance procedures for making a false statement or for engaging in consensual sexual conduct based solely on the determination regarding whether sex discrimination occurred.

For allegations of sex-based harassment involving a student, the written notice of determination must be provided simultaneously to the parties. For matters involving such allegations, the written notice of determination must include the following:

- A description of the alleged sex-based harassment;
- Information about the policies and procedures that HACC used to evaluate the allegations;
- The adjudicator's evaluation of the relevant and not otherwise impermissible evidence and determination about whether sex-based harassment occurred;
- When applicable, a description of any disciplinary sanctions that will be imposed on the respondent, whether remedies other than disciplinary sanctions will be provided to the complainant by the College and, to the extent appropriate, other students identified by the College to be experiencing the effects of the sex-based harassment; and
- The College's procedures and permissible bases for the complainant and the respondent to appeal.

Appeals

For allegations of sex-based harassment involving a student, any party may file an appeal on any or all of the following bases:

- Procedural irregularity that would change the outcome;
- New evidence that would change the outcome and that was not reasonably available when the determination of responsibility was made; and
- The Title IX Coordinator, investigator, or adjudicator had a conflict of interest or bias for or against complainant or respondents generally or the individual complainant or respondent that affected the matter's outcome.

If a party appeals a determination regarding allegations of sex-based harassment involving a student, the College will,

- Notify all parties in writing of any appeal, including notice of the allegations, if such notice was not previously provided to the respondent,
- Implement appeal procedures equally for the parties,
- Ensure that the appeal officer did not take part in an investigation of the allegations or dismissal of the complaint,
- Ensure that the appeal officer has been trained consistent with the Title IX regulations,
- Communicate to the parties in writing that they will be provided a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome, and
- Provide a written decision to the parties regarding the appeal's result and the rationale for that result.

The appeal officer will decide any such appeals.

For allegations of sex discrimination that are not allegations of sex-based harassment involving a student, the appeal process will be the same as in the relevant non-Title IX context. For more information, consult the policy relevant to the specific situation at issue:

- Employee Corrective Action (Shared Governance Policy 831);
- Student Grievance Procedure (Shared Governance Policy 504);
- Academic Appeals (Shared Governance Policy 608).

Informal Resolution Process

In lieu of resolving a complaint through the College's Title IX grievance procedures, the parties may instead elect to participate in an informal resolution process. HACC will inform the parties in writing of the informal resolution process it offers and determines is appropriate, if any. HACC will not offer informal resolution to resolve a complaint when doing so would conflict with federal, state, or local law. Before initiating the informal resolution process, the College will explain the following to the parties in writing:

- The allegations;
- The requirements of the informal resolution process;

- That any party has the right to withdraw from the informal resolution process and initiate or resume grievance procedures at any time before agreeing to a resolution;
- That if the parties agree to a resolution at the end of the informal resolution process, they cannot initiate or resume grievance procedures arising from the same allegations;
- The potential terms that may be requested or offered in an informal resolution agreement, including notice that an informal resolution agreement is binding only on the parties; and
- What information HACC will maintain and how the College could disclose such information for use in Title IX grievance procedures if such procedures are initiated or resumed.

Any party to an informal resolution process under this policy must comply with the terms of any written agreement entered into by the parties during the informal resolution process. A party's violation of such an agreement constitutes a violation of this policy and potentially other College policies.

Supportive Measures

HACC will offer and coordinate supportive measures as appropriate for the complainant or respondent to restore or preserve that person's access to the College's education programs or activities or to provide support during the College's Title IX grievance procedures or during the informal resolution process.

Supportive measures may vary depending on what the College deems reasonably available. The College may, as appropriate, modify or terminate supportive measures at the conclusion of the Title IX grievance procedures or at the conclusion of the informal resolution process. Or the College may continue those supportive measures in place beyond that point.

The complainant or respondent may seek modification or reversal of the Title IX Coordinator's decision to provide, deny, modify, or terminate supportive measures applicable to them. The parties may also seek modification or termination of a supportive measure ordered by the Title IX Coordinator based on a material change of circumstances. For supportive measures affecting a student, the request for modification or reversal of the supportive measure decision will be decided by the College's Assistant Vice President for Student Engagement and Belonging. Appeals regarding all other supportive measures decisions will be decided by the College's Vice President of Human Resources and Organizational Development.

These individuals will have the authority to modify or reverse the Title IX Coordinator's decision regarding supportive measures, if it is determined that the Title IX Coordinator's decision regarding supportive measures is inconsistent with the term "supportive measures," as defined in this policy.

Orders regarding supportive measures will not be disclosed to any person unless necessary to provide the supportive measure or to restore or preserve a party's equal access to the College's education programs or activities. Disclosure may also be provided under the following circumstances:

- The College has obtained prior written consent from a person with the legal right to consent to the disclosure;
- The information is disclosed to a parent, guardian, or other authorized legal representative with the legal right to receive disclosures on behalf of the person whose personally identifiable information is at issue;
- To carry out the purposes of this policy, including action taken to address conduct in the College's education programs or activities that may reasonably constitute sex discrimination under Title IX;
- When required by federal law, federal regulations, or the terms and conditions of a federal award, including a grant award or other funding agreement; or
- To the extent such disclosures are not otherwise in conflict with Title IX or this policy, when required by state or local law or when permitted under FERPA⁷ or its implementing regulations.⁸

Reasonable Modifications for Pregnancy or Related Conditions

The College will make reasonable modifications to its policies, practices, or procedures as necessary to prevent discrimination based on pregnancy or related conditions. Each such reasonable modification must be based on the student's individualized needs, as indicated during a consultation with the affected student. The student has discretion to accept or decline each reasonable modification. If, however, a student accepts an offered modification, the College must implement it. Such reasonable modifications can include the following: breaks during class to express breast milk, breastfeed, or attend to health needs associated with pregnancy or related conditions, including eating, drinking, or using the bathroom; intermittent absences to attend medical appointments; access to online or

⁷ 20 U.S.C. § 1232g

⁸ 34 C.F.R. part 99

homebound education; changes in schedule or course sequence; extensions of time for coursework and rescheduling of tests and examinations; allowing a student to sit or stand, or carry or keep water nearby; counseling; changes in physical space or supplies (for example, access to a larger desk or a footrest); elevator access or other changes to College policies or practices. Nevertheless, the College is not required to implement any such requested modification if doing so would fundamentally alter the education program or activity at issue.

The College will allow a student to voluntarily access any separate and comparable portion of the College's education programs or activities. Likewise, the College will allow any affected student to take a leave of absence from the College's education programs or activities to cover, at a minimum, the period of time deemed medically necessary by the student's licensed healthcare provider. When such a student returns to the College's education programs or activities, the student will be reinstated to the academic program and, as practicable, to the extracurricular status that the student held before the voluntary leave began.

The College will ensure that any affected student can access a lactation space, which must be a space other than a bathroom, which is clean, shielded from view, free from intrusion from others, and may be used by a student for expressing breast milk, breastfeeding, or chest feeding, as needed.

The College will treat pregnancy and related conditions in the same manner as it does any other temporary medical conditions with respect to any medical or hospital benefit, service, plan, or policy the College administers, operates, offers, or participates in with respect to students admitted to the College's education programs or activities.

The College will not require a student who is pregnant or who has pregnancy related conditions to provide certification from a healthcare provider (or any other person) that the student is physically able to participate in a class, extracurricular activity or other education programs or activities of the College, unless (i) the certified level of physical activity or health is necessary for participation in the class, program, or extracurricular activity, (ii) the College requires the same certification for all students participating the class, program, or extracurricular activity, and (3) the information obtained is not used as a basis for engaging in sex-discrimination.

For more information, please consult Shared Governance Policy 872, *Pregnant and Lactating Parents*.

Reasonable Modifications for Students Who Are Parents

The College will make reasonable modifications to its policies, practices, or procedures as necessary to prevent discrimination against students based on their parental status, unless doing so would fundamentally alter an essential academic requirement. Students in need of accommodation due to their status as a parent should consult with the Title IX Coordinator, the relevant Deputy Title IX Coordinator, or Student Access Services. This policy applies to all students who are parents without regard to the students' sex. This policy also does not supplant any other rights that a parental student may have under other College policies or federal, state, or local laws.

Disciplinary Sanctions or Remedies

Following a determination that sex discrimination occurred, the College may impose the following disciplinary sanctions or remedies:

- If the respondent is a student and is found responsible for violating the College's prohibition against sex discrimination, the respondent may receive any of the following sanctions or remedies:
 - Loss of privileges;
 - No-contact directive;
 - Cease and desist order;
 - Written warning;
 - Barring access to campus;
 - Barring or suspension from College activities (extracurricular or otherwise);
 - Mandatory training;
 - Mandated counseling;
 - Educational sanctions;
 - Disciplinary probation;
 - Suspension;
 - Expulsion;
 - An order of restitution; or
 - Any combination of the sanctions remedies listed above.

- If the respondent is not a student and is found responsible for violating the College's prohibition against sex discrimination, the respondent may receive any of the following sanctions or remedies:
 - Any sanction or remedy applicable to a student respondent, if such sanction or remedy is appropriate;
 - Cease and desist order;
 - Written reprimand;
 - Final written warning;
 - Change in work assignment;
 - Demotion;
 - Loss of privileges;
 - No-contact directive;
 - Mandatory training;
 - Mandatory counseling;
 - Suspension (with or without pay);
 - Termination of Employment;
 - Non-renewal of contract;
 - An order of restitution; or
 - Any combination of these sanctions.

When the respondent is a tenured faculty member who is found responsible for violation of this policy, the adjudicator may not order a termination of employment or non-renewal of an employment contract. The adjudicator, however, may recommend termination of employment or non-renewal of the faculty member's employment contract. If such a recommendation is issued, the ultimate decision regarding whether to impose that recommended sanction will be made in accordance with the relevant dismissal or grievance procedure pertaining to removals of tenured faculty.

These same disciplinary sanctions or remedies may be imposed upon a finding that a respondent is responsible for sex-based harassment, regardless of whether or not a student is involved.