

# Conduct Hearing Panel Training

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Lina Blair, Director of Student Life & Conduct

[linablair@grcc.edu](mailto:linablair@grcc.edu)

Kimberly DeVries, Director of EO Compliance

[kimberlydevries1@grcc.edu](mailto:kimberlydevries1@grcc.edu)

# Goals of Conduct

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- Keep our campus community safe
- Stop problematic behavior from happening
- Provide opportunities for everyone involved to learn
- Repair harm caused

Things that are NOT goals of conduct:

- To come down unnecessarily hard on students
- To kick students out of GRCC

# Conduct Process - Some Context

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- Report of a concern is made
- Is there enough information to move forward?
  - Yes: Move forward
  - No: Dig deeper investigate
  - Still no? Process ends.
- Respondent is notified of allegations formally via email, has five days to schedule meeting.
- Conduct Administrator meets with student to give them a chance to respond to the allegations and to understand their perspective.
- After meeting, Conduct Administrator determines if it's more likely than not that a violation occurred.

# Standard of Proof

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Preponderance of the evidence

What does that mean?

- Whether it is more likely than not that the respondent violated the Student Code of Conduct and/or College policy
- 50% + a feather

# Conduct Process - Continued

- If a violation occurred, Conduct Administrator determines an appropriate sanction

## Sanction Range

Verbal Warning

Written Warning

Probation (duration)

Suspension (duration)

Expulsion (permanent)

Other Sanctions (restitution, reflection paper, withholding of degree, etc.)

- Letter is sent to student explaining outcome and sanction, as well as appeal process.

If sanction is a verbal or written warning, appeal directly to Dean of Student Affairs

If sanction is probation or higher, appeal to Hearing Committee

# When do we notify complainant of outcome?

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- FERPA only allows us to notify the complainant of the outcome if...
  - They're a victim of a violent crime
  - They're a victim of Title IX issue
- That means complainants can only appeal in these cases

# Conduct Board Hearing

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- Respondent (or complainant in certain cases) can appeal the finding of responsibility and/or the severity of the sanction
- The respondent(s) and complainant(s) will be given written notice of the time/date/place of the hearing, the reason for the sanction, a list of witnesses and notice of the nature of evidence.
- Hearing must occur within 10 days of the request
- The respondent and complainant attend the hearing, present evidence and witnesses and hear the witnesses
- A single audio recording of the hearing serves as the record for the hearing.

# Who attends a hearing?

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- Three hearing committee members (faculty, staff - one member serves as chair)
- respondent(s) plus advisor(s)
  - Advisor's role
- Complainant(s) plus advisor(s)
- Witnesses, called individually
- Procedural advisor (Kimberly, Lina, Jennifer, hearing committee member)
- Campus Police if necessary



# What materials do you get for a hearing?

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- All materials that are relevant to the appeal itself
  - Formal letters to respondent notifying them of allegations
  - Meeting notes
  - Written reports
  - Formal letter outlining finding and sanction
  - Video, photos and other media related to the reason for the appeal
- Hearing Script
- We generally provide these materials at least three or four days prior to the hearing

# Role of the Chairperson

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- Manage the hearing, with the help of the hearing script
- Keep the hearing on track, focusing on relevant information
- Call a recess if necessary
- Ensure all parties have opportunity to be heard and ask questions of each other

# Opportunity to Hear All Sides

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- Respondent responds to whether they are responsible for each allegation
- Respondent responds to whether they believe the sanction is appropriate or too harsh
- In cases where appropriate, the complainant does the same
- **The complainant** will give their testimony and the hearing committee will ask any relevant questions.
- **The complainant's witnesses** would then be called, give statements and be asked questions by the hearing committee.
- **The respondent** will give their testimony and the hearing committee will ask any relevant questions.
- **The respondent's witnesses** would then be called, give statements and be asked questions by the hearing committee.

# Opportunity to Hear All Sides (cont.)

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- The respondent and complainant (or their advisors in appropriate cases) will have a chance to ask questions of the other.
- The respondent and complainant (or their advisors in appropriate cases) will have a chance to ask questions of the witnesses.
- Clarifying and closing statements may be made by the respondent and complainant.
- The hearing committee may ask any final questions.
- Hearing is adjourned and everyone but the hearing committee and procedural advisor is dismissed.

# After the hearing

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- This part is not recorded
- Discuss case and determine via a simple majority vote:
  - Whether there is sufficient information to find the respondent responsible for a violation(s) of the Student Code of Conduct
  - After a finding of responsibility is determined, the conduct board may review the student's past violations (if any), academic progress, etc. so appropriate sanctions and special conditions may be assigned
  - If responsible, whether the sanction assigned was appropriate or too harsh
- Notification to respondent (and complainant in some cases) within 10 days
  - This is written as a formal report by the Chair, with help from the other hearing committee members

# Final Appeal

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After the conduct hearing panel makes a decision and notifies the student, the accused (or complainant in some cases) can appeal to the Dean of Student Affairs within five business days.

Must be a written request and the basis of the appeal must address one or more of the following:

- Whether appropriate procedures were followed
- Whether the sanctions imposed are appropriate, reasonable or just
- Whether the decision was supported by evidence
- Whether all relevant information was available at the time of the hearing

**Forget everything we just said. . .  
(kidding, kinda)**

# Title IX and Sexual Misconduct

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- What's the difference? Why does it matter?
  - You don't have to determine the difference, but there are variations in the process
- Comfort level with these topics; consider this in advance.
  - Take a break in training if you need
  - In hearings, difficult and sensitive information is almost always present.



# Sexual Misconduct

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- This includes sexual assault, stalking, sexual exploitation, domestic and dating violence, and sexual harassment.
- Brief explanation of those definitions: they don't necessarily mean what you think they mean.
- Often deal with sensitive topics and matters, and require details about sensitive topics
- [Title IX Sexual Harassment policy with definitions](#)
- [Sexual Misconduct policy with definitions](#)

# Due Process

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- Notice
- Opportunity to be heard

# Sexual Misconduct policy processes

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- Processes are overall similar to the Conduct code hearing processes
- If anything is different from Code of Conduct, follow Sexual Misconduct policy
- Main differences:
  - Role of advisor: This is 6th circuit requirement as well as Title IX regulations, so this will likely continue even if regulations change.
  - Complainant's role: They'll almost always be present, and must be notified of any information/sanctions related to them

# Title IX Sexual Harassment policy

- Quick overview of jurisdiction:
  - Title IX definition of sexual harassment
  - Within educational program or activity
  - Respondent over whom college has control
  - Happened against complainant while in the United States
- Requirements to move forward under this policy:
  - Formal, signed complaint (usually from complainant or Title IX Coordinator) notifying us of incident and requesting us to follow our TIX process
  - At time of complaint, complainant is accessing or attempting to access institution

# Important points:

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- Conflicts:
  - We'll screen for potential conflicts, but please advise immediately if you catch one!
- Confidentiality:
  - Information is FERPA protected; you'll have access to education records.
  - Need for privacy

# Retaliation

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- Retaliation:
  - Required participation in proceedings
  - Impact of complainant not participating
  - Report any concerns of retaliation immediately

# Purpose of Hearing

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- Unlike conduct hearings, this is not an “appeal”, this is the first time responsibility is being decided.
- You’ll have access to report written by investigator, but that cannot include credibility assessment or conclusion of responsibility
- You will be asking questions, which can be based on report or on information shared at hearing
- Your ultimate role will be to reach conclusion about responsibility and issue sanction, if person is found responsible

# Presumption & Standard of Proof

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From Title IX policy:

- **Presumption and Standard of Proof:** GRCC operates with the presumption that the Respondent is not responsible for the alleged Sexual Harassment. This presumption exists unless and until the Respondent is determined to be responsible for a policy violation by a preponderance of the evidence. The preponderance of the evidence standard means whether it is more likely than not that the Respondent violated the Policy as alleged.



# Advisors

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- Different role than at hearings for Code of Conduct violations
- Who are advisors, and where might they come from?
  - Advisors of student's choice
  - Advisors appointed by the institution
- Advisors will ask cross-examination questions of other party and other party's witnesses.
  - Parties must have the opportunity to cross-examine other party and other party's witnesses.

# Hearing Considerations

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- Relevance and determinations that must be made regarding relevance
- Credibility and its role

# Decisions re: relevance

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- Hearing panel, through the Chair, must decide whether a question asked by the other party (through advisor) is relevant and articulate that reasoning on the record before the question is allowed/disallowed.
- Can ask the advisor and party to articulate why the question is relevant

# What is NOT considered at hearing:

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i. The hearing does not consider:

(a) incidents not directly related to the possible violation, unless they evidence a pattern; (b) the character of the parties; or (c) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

# Questioning at Hearings

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- Simple, direct questions
- Yes or no is okay to clarify, but may also need to get specific details
- Try to be as clear as possible with your questions, so everyone has the same take-away when you're making a decision
- You need to ask all the questions and get all the information you need to make the decision.

# Decision making and letter

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- Decision letter is written by the Hearing Panel articulating the basic reasons they made decision that they did and how they arrived at the conclusion
- From Title IX Policy:
  - The Chair 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, and credibility assessments.

# Bias in the process

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- Implicit Bias:
  - Unconscious attitudes or stereotypes
- Disparate Treatment and Impact:
  - Treatment that is different or impact that is different based on someone's status
  - Disparate treatment; sometimes intentional
  - Disparate impact: often unintentional, when policies, procedures, etc that appear to be neutral impact some groups differently

# Weighing Credibility

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- Broad discretion on what you consider in terms of credibility, but be mindful of what criteria you're using
  - Example- someone “looked me in the eye”, someone “seemed credible”
  - Need to be able to articulate why you made decisions you did
- Can allow something to be considered as relevant evidence, and weigh it accordingly



# Determining Title IX/Sexual Misconduct sanctions after responsible finding

- Sanctions might be creative and unique to circumstances
- Input of complainant can be considered
- Prior sanctions in similar cases may be relevant as well; procedural advisor can share that information on request

# What would help moving forward?

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- Sample hearing and decision-making process
- Walk through scenarios
- What else?

# Scope of Title IX policy

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- Behavior occurs within our educational program or activity
- Complaint is in writing and signed by complainant, expressing desire to go forward with disciplinary process
- Complainant is a student/employee at time of complaint
- Respondent is a student/employee at time of conduct
- Complained-of behavior meets specific definitions for sexual harassment

# Scope of Sexual Misconduct Policy

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- “Everything else” that doesn’t go through Title IX policy if it could be considered sexual harassment, stalking, DV, etc.
- If it doesn’t fit here, it goes through Code of Conduct
- When hearing or incident comes to you, we’ll identify what policy is at issue and how the processes might differ

# Presumption & Standard of Proof

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From Title IX policy:

- **Presumption and Standard of Proof:** GRCC operates with the presumption that the Respondent is not responsible for the alleged Sexual Harassment. This presumption exists unless and until the Respondent is determined to be responsible for a policy violation by a preponderance of the evidence. The preponderance of the evidence standard means whether it is more likely than not that the Respondent violated the Policy as alleged.

# Disparate Treatment & Impact

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- A rule that applies to everyone but impacts some people differently
- Disparate treatment: more obvious discriminatory behavior
- Disparate impact: often called “unintentional discrimination”

# Reporting, Confidentiality and Privacy

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- Responsible employee role for what you must report as a GRCC employee
- These proceedings are confidential, to the extent provided by law
- FERPA applies, as much of content you'll have access to is educational record

# Situation - specific remedies

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- At sanction stage, various considerations apply
- Some situations may call for specific sanctions/remedies to address the complainant's concerns (no contact, class limitations, etc.)
- Others may involve creativity and situation-specific remedies
  - Educational efforts (training, etc.)
  - Specific restrictions on respondent



# Equity & Due Process

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- Focus is always on due process:
  - Notice to accused of the behavior at issue
  - Opportunity to be heard
- In proceeding through a hearing, this is key
  - If one party has opportunity, other party does too
  - If one party makes statement, other party can respond

# Weighing Evidence

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- After gathering all evidence, hearing committee's role is to determine finding based on weighing evidence
- There might be evidence you admit at hearing but give very little weight, because you don't find it credible, or others have disagreed with it, or it could be verified but hasn't been
- Look at credibility, opportunity to see/know things they share, what they have to gain/lose from telling the truth or not, small "micro-corroborations".

# Conducting Questioning

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- Be very clear and concise
- Don't ask compound questions: "Did you put on your jacket and then leave?"
- Get all information you need that you may use to determine finding
- Prepare to ask difficult questions

# Assessing Credibility

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- Be honest about how you're assessing credibility
- Identify what factors you're using
- Be mindful of equity of those factors

# Impartiality & Objectivity

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- Again, be mindful of what you're using, criteria you're considering
- Ask about something if you're considering it
- Be honest and engage with it

# Findings and Providing Rationales

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- Committee will be asked to make a finding
- Particularly in Title IX cases, committee will need to provide a detailed rationale including:
  - What evidence committee considered
  - What evidence committee relied upon in finding
  - What conclusions committee comes to
  - What sanction is appropriate, if needed

# Definitions of Offenses

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- Review definitions from Title IX Sexual Harassment policy and Sexual Misconduct policy
- Develop a system for specifically analyzing which elements have been met, which have not, and what information you need.
- Ask questions if you have them about the offense definitions

# Definitions of Consent

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- A “clear, freely given yes” to sexual activity
- Review policy definition for Title IX and Sexual Misconduct at <https://www.grcc.edu/sites/default/files/docs/policies/6.4-sexual-misconduct-accessible.pdf>



# Avoiding Pre -judging the facts

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- Review information that parties have shared
- Listen for what they say, and don't make assumptions
- Check with others to be sure you heard the same thing

# Bias

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- Reflecting bias in assumptions of the parties' identities, how they interact
- Think about social and relationship norms you may be bringing to the conversation
- Remove yourself if your biases are influencing your neutrality
- Hold other hearing conduct members accountable if you believe they may be biased

# Relevance of Questions & Evidence

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- Consider whether the evidence shared makes something more or less likely to be true
- Evidence may be relevant and can be admitted, and panel can determine how to weigh the evidence

# What is NOT considered:

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From Title IX policy 12(a)(1): The hearing does not consider:

- incidents not directly related to the possible violation, unless they evidence a pattern;
- the character of the parties; or
- questions and evidence about the Complainant's sexual predisposition or prior sexual behavior
  - Exception is if this is offered to prove someone else committed the conduct, or offered to prove consent.