

MAINE COMMUNITY COLLEGE SYSTEM RULES FOR TITLE IX LIVE HEARINGS

I. Introduction

This Procedure applies to Live Hearings (“hearing”) held following the completion of an investigation of a Title IX Formal Complaint.

II. Definitions

- A. **Advisor** means a person, of the Complainant’s or Respondent’s choice, who performs the cross-examination of the other party and the other party’s witnesses. If the Complainant or Respondent does not have an Advisor, one will be assigned at the time of the hearing. Advisors are not advocates and do not appear on behalf of the party.
- B. **Complainant** means a person who is alleged to be the victim of conduct that could constitute sexual harassment.
- C. **Decision Maker** means a person who oversees the hearing and writes the Finding Report.
- D. **Finding** means a determination of responsibility.
- E. **Respondent** means a person who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
- F. **Standard of Evidence** means a preponderance of the evidence; that the conduct more likely than not did/did not occur.
- G. **Witness** means a person who has information or knowledge that can aid the Decision Maker in making a Finding.

III. Pre-Hearing

A. Notices to Decision Marker

At least three days prior to the hearing, all parties must submit to the Decision Maker:

1. Whether the party will attend the hearing;
2. Whether the party will submit to cross-examination;
3. Whether the party is requesting a separate room from the other party during the hearing;

4. Whether their Advisor will attend the hearing; and
5. The witness list including the order in which the witnesses shall be called.

B. Witness Questions

The parties are strongly encouraged to submit their list of questions to the Decision Maker at least three days prior to the hearing in order to assist in relevancy determinations in advance of the hearing and enable the hearing to proceed without undue delays.

IV. Live Hearing

A. Hearing Logistics

1. During the hearing, parties shall be in the same location, but in separate rooms, if requested.
2. The hearing shall be synchronous, aided by technology and recorded.
3. Both parties shall see and hear the Decision Maker, each other, and all witnesses.
4. Witnesses may appear remotely to facilitate participation, if requested.
5. Each party may have one Advisor present in the hearing room.
6. Other individuals providing support to either party may be on site and available to speak with the parties during breaks, but may not attend the hearing, either in person or by technology.

B. Decorum

The parties, Advisors and witnesses are required to conduct themselves in a civil and respectful manner throughout the hearing. Prohibited conduct includes raised voices; aggressive questioning; bullying, demeaning or intimidating behavior; disrespect towards the Decision Maker; and conduct that interferes with or disrupts the hearing process.

C. Role of Decision Maker

1. Pacing of Proceedings

The Decision Maker shall control the pacing of the proceeding, including granting or denying requests for breaks, granting breaks of the Decision Maker's own volition, and determining the length of all breaks.

2. Conduct of all Participants

The Decision Maker shall monitor the conduct of all participants consistent with the decorum requirements in these rules. Employees and students who do not heed warnings to conform their conduct to the Rules may be subject to separate disciplinary proceedings. Advisors who do not heed such warnings may be removed by the Decision Maker from the hearing. If an Advisor is removed, a new Advisor, if available, will be appointed to continue with the hearing and conduct the cross examination, or the hearing will be rescheduled to continue at another date.

3. Relevancy Determinations

The Decision Maker shall make a relevancy determination on every cross-examination and follow up question.

- a. Parties may not answer any cross-examination or follow up question until after the Decision Maker has made a relevancy determination.
- b. The Decision Maker shall give a justification if a question is not allowed.
- c. Questions regarding an individual's sexual history are not relevant unless asked to:
 - 1.) Prove consent for the alleged violation.
 - 2.) Show history of consensual relations between the two parties.
 - 3.) Raise doubt as to the identity of the Respondent as the person who engaged in the alleged conduct
- d. Advisors may not object to a relevancy determination.
- e. Appeals are not available on relevancy determinations.

4. Availability of Evidence

Evidence shall be available during the hearing for both parties to use, even if the parties are in different rooms.

5. Questioning Parties

The Decision Maker shall conduct the direct examination of the parties and witnesses.

D. Hearing Opening

The Decision Maker shall begin the hearing by stating the purpose of the hearing, the names of the parties, the names of the Advisors, and reading the list of the witnesses. The Decision Maker will remind the parties and advisors of the conduct requirements. The Decision Maker will also remind the parties and advisors of the confidential nature of the proceedings and that retaliation against any participant is prohibited.

E. Examination

Questioning of the parties and their witnesses shall proceed in the following sequence, beginning with the Complainant and Complainant's witnesses.

1. The Decision Maker shall conduct the direct examination of the party. Parties shall answer the questions themselves, not through an Advisor.
2. The Decision Maker shall invite cross examination of the party. Parties shall answer the questions themselves, not through an Advisor.
3. The Decision Maker shall conduct the direct examination of the party's witnesses.
4. The Decision Maker shall invite cross examination of the party's witnesses.

F. Cross Examination

1. Only an Advisor is permitted to conduct cross-examination. Parties may not conduct cross-examination.
2. If an Advisor cannot be present, one will be assigned for the sole purpose of conducting cross-examination.
3. If a party does not attend the hearing, the Advisor for the other party may still conduct cross examination of witnesses and an Advisor may be assigned to the absent party for the sole purpose of conducting cross-examination.
4. Advisors must conduct cross-examination in a civil and respectful manner consistent with the hearing rules.
5. The Decision Maker will make relevancy determinations consistent with these Rules.
6. Repetition of questions that have been asked and answered may be ruled irrelevant by the Decision Maker and disallowed.

G. Hearing Closing

The Decision Maker shall recognize that all parties have been examined or identify any party that declined to participate in examination or cross-examination. Parties and Advisors shall be reminded of the confidential nature of the proceedings and that retaliation shall not be tolerated.

V. Post-Hearing

A. Distribution of Recording

Recordings of the Live Hearing (audio required, video not required) shall be distributed to the parties within 10 days of the conclusion of the hearing.

VI. Modification of Live Hearing Rules

These Rules may be modified with the approval of the MCCS Office of General Counsel.