Procedure 6.2201

Title IX Sexual Harassment Grievance Procedures

1. APPLICABILITY, COMPLAINT INTAKE, AND OVERARCHING PROVISIONS

1.01 Applicability of Grievance Procedures

As noted in the Title IX Sex and Gender Discrimination and Harassment Policy, these Grievance Procedures apply to allegations of Sexual Harassment in BCCC's Education Program or Activity (and to related Retaliation, at the discretion of the Title IX Coordinator). BCCC treats Complainants and Respondents equitably by providing remedies to a Complainant where BCCC makes a determination of responsibility for Sexual Harassment against a Respondent under these Grievance Procedures and also by following these Grievance Procedures before imposing any disciplinary sanctions against a Respondent for Sexual Harassment.

1.02 Obligation to Respond and Initial Outreach to Complainant

When BCCC has Actual Knowledge of Sexual Harassment (or allegations thereof) against a person in the United States in its Education Program or Activity, BCCC is obligated to respond and to follow Title IX's specific requirements, which are addressed and incorporated in these Grievance Procedures.

Promptly upon receiving allegations of Sexual Harassment against a person in the United States in BCCC's Education Program or Activity, the Title IX Coordinator will contact the Complainant to discuss the availability of Supportive Measures with or without the filing of a Formal Complaint and to explain to the Complainant the process for filing a Formal Complaint.

1.03 Filing of a Formal Complaint

As noted in the Definitions section of the Title IX Sex and Gender Discrimination and Harassment Policy, a Formal Complaint means a document filed by a Complainant or signed by the Title IX Coordinator alleging Sexual Harassment against a Respondent and requesting that BCCC investigate the allegation(s) of Sexual Harassment. At the time of filing a Formal Complaint a Complainant must be participating in or attempting to participate in BCCC's Education Program or Activity. A Formal Complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information listed in section 1.01 of the Title IX Sex and Gender Discrimination and Harassment Policy 6.22. As used in this paragraph, the phrase "document filed by a Complainant" means a document or electronic submission that contains the Complainant's physical or digital signature or otherwise indicates that the Complainant is the person filing the Formal Complaint.

When the Title IX Coordinator believes that, with or without the Complainant's desire to participate in a grievance process, a non-deliberately indifferent response to the allegations requires an investigation, the Title IX Coordinator has the discretion to initiate the grievance process by signing a Formal Complaint. Where the Title IX Coordinator

signs a Formal Complaint, the Title IX Coordinator is not a Complainant or otherwise a party under these Grievance Procedures. Furthermore, initiation of a Formal Complaint by the Title IX Coordinator is not sufficient alone to imply bias or that the Title IX Coordinator is taking a position adverse to the Respondent.

Once a Formal Complaint is initiated, an alleged victim will be referred to as a "Complainant," and an alleged perpetrator will be referred to as a "Respondent."

1.04 Notice of Allegations

Upon receipt of a Formal Complaint, the Title IX Coordinator will provide the Complainant and any known Respondent written notice of these Grievance Procedures and of the allegations of conduct potentially constituting Sexual Harassment, including sufficient details known at the time and with at least five days to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting Sexual Harassment, and the date and location of the alleged incident, if known.

The written notice will include a statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process. The written notice also will inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney and that at appropriate junctures the parties and their advisors may review and inspect evidence collected during the investigation. Additionally, the written notice will inform the parties of BCCC's prohibition on knowingly making false statements or knowingly submitting false information during the grievance process.

If, in the course of an investigation, BCCC decides to investigate allegations of Sexual Harassment involving the Complainant or Respondent that are not included in the original written notice of allegations, BCCC will provide notice of the additional allegations to the parties whose identities are known.

1.05 Dismissal

BCCC will investigate the allegations in a Formal Complaint; however, BCCC will dismiss a Formal Complaint or a portion of the allegations therein if (1) the conduct alleged in the Formal Complaint, even if substantiated, would not constitute Sexual Harassment; (2) at the time of filing the Formal Complaint the Complainant was not participating in or attempting to participate in BCCC's Education Program or Activity; (3) the conduct alleged in the Formal Complaint did not occur in BCCC 's Education Program or Activity; or (4) the conduct alleged in the Formal Complaint did not occur against an individual in the United States. Such a dismissal may take place at the conclusion of the investigation or at any time prior to the conclusion of the investigation.

Additionally, BCCC may dismiss a Formal Complaint or a portion of the allegations therein if (1) the Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein; (2) the Respondent is no longer enrolled or employed at BCCC; or (3) despite efforts to do so, BCCC is unable to gather evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

In the event the Title IX Coordinator determines that dismissal of a Formal Complaint or a portion of the allegations is appropriate, the Title IX Coordinator will promptly notify both parties in writing of the dismissal and the reasons for it. Dismissal does not impair BCCC's ability to proceed with any appropriate investigatory or disciplinary actions under the Sex and Gender Discrimination and Harassment Policy or another BCCC policy or procedure and/or to provide Supportive Measures to the parties.

Either party may appeal a decision to dismiss a Formal Complaint or a portion of the allegations on the following grounds by submitting a written appeal to the Title IX Coordinator within seven days of the issuance of the written notice of the dismissal: (1) procedural irregularity that affected the decision to dismiss; (2) new evidence that was not reasonably available at the time of dismissal and that could affect the outcome of the matter; or (3) the Title IX Coordinator or other participant in the dismissal having a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the decision to dismiss.

The Title IX Coordinator will promptly notify the other party of the appeal, and the non-appealing party may submit a response to the appeal within five days of notification of the appeal.

The Title IX Coordinator will appoint an appeal officer and will contemporaneously share the appeal officer's name and contact information with the Complainant and the Respondent.

Within two days of such appointment, the Complainant, or the Respondent may identify to the Title IX Coordinator in writing alleged conflicts of interest or bias on the part of the appeal officer. The Title IX Coordinator will consider such statements and will promptly assign a different appeal officer if the Title IX Coordinator determines that a material conflict of interest or material bias exists.

The Title IX Coordinator will forward the Formal Complaint and any documents upon which the dismissal decision was based, as well as the appeal; and any response to the appeal to the appeal officer.

Within seven days of receipt of those materials, the appeal officer will determine whether any of the grounds for appeal warrant overturning or modifying the dismissal. The decision by the appeal officer is final.

1.06 Advisors

The Complainant and the Respondent may be accompanied to any meeting or proceeding under these Grievance Procedures by the advisor of their choice, who may be, but is not required to be, an attorney. BCCC will not limit the choice or presence of the advisor for either the Complainant or the Respondent in any meeting or grievance proceeding. Advisors, however, are not allowed to disrupt any such meeting or proceeding or to speak on behalf of the Complainant or the Respondent, with the exception of cross-examination during any hearing conducted under these Grievance Procedures, which must be conducted by an advisor and never personally by the Complainant or the Respondent.

Parties must provide the name and contact of their advisor to the Title IX Coordinator in writing as soon as reasonably possible and must provide updated information if their advisor changes. All advisors will be required to assent to BCCC's Expectations for Advisors.

If a party does not have an advisor present at the hearing, BCCC will provide, without any charge to that party, an advisor of BCCC's choice who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party.

Absent accommodation for a disability, the Complainant and the Respondent may not be accompanied by more than one advisor or by other individuals during meetings or proceedings under these Grievance Procedures.

1.07 Amnesty

BCCC considers the reporting and adjudication of Sexual Harassment to be of paramount importance. BCCC does not condone underage drinking or the use of illegal drugs; however, BCCC may extend amnesty to Complainants, Respondents, witnesses, and others involved in a grievance process from punitive sanctioning for illegal use of drugs and/or alcohol when evidence of such use is discovered or submitted in the course of a grievance process. Similarly, BCCC may, in its discretion, provide amnesty for other conduct code violations that are discovered in the course of a grievance process.

1.08 Timing

BCCC will make every reasonable effort to ensure that the investigation and resolution of a Formal Complaint occurs in as timely and efficient a manner as possible. The timelines set forth in these Grievance Procedures are guidelines and may be altered for good cause with written notice to the Complainant and the Respondent of any delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; natural disasters, pandemic restrictions, and similar occurrences; or the need for language assistance or accommodation of disabilities.

BCCC will strive to complete its investigation and resolution of a Formal Complaint (not including an appeal, if applicable) within 90 calendar days of the receipt of the Formal Complaint, absent extenuating circumstances. Hearings generally will take place within 30 calendar days of the conclusion of the investigation. Within ten calendar days of the conclusion of the hearing, both the Complainant and the Respondent will receive a final outcome letter.

Either party may request an extension of any deadline by providing the Title IX Coordinator with a written request for an extension that includes reference to the duration of the proposed extension and the basis for the request. The Title IX Coordinator will review the request and will make a determination with regard to the request within five days.

1.09 Written Notice of Meetings

BCCC will provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings with sufficient time for the party to prepare to participate.

1.10 Effect of Corollary Criminal Investigation

BCCC's investigation may be delayed temporarily while criminal investigators are gathering evidence. In the event of such a delay, BCCC will implement any appropriate Supportive Measures and will evaluate the need for other actions necessary to assist or protect the Complainant, the Respondent, and/or the BCCC community.

Neither the results of a criminal investigation nor the decision of law enforcement to investigate or decline to investigate a matter is determinative of whether Sexual Harassment has occurred in the eyes of BCCC.

1.11 Emergency Removal and Administrative Leave

BCCC may remove a Respondent from BCCC's Education Program or Activity on an emergency basis, provided that BCCC first undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Sexual Harassment justifies removal, provides the Respondent with notice and an opportunity to challenge the decision immediately following the removal, and does so in accordance with the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act, as applicable.

Additionally, BCCC may place a non-student employee Respondent on administrative leave during the pendency of BCCC's response to allegations of Sexual Harassment provided that it does so in accordance with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act.

1.12 Effect of Respondent Withdrawal, Graduation, or Resignation During Grievance Process

At the discretion of BCCC, a Respondent who withdraws from classes or resigns from employment during the pendency of a grievance process under these Grievance Procedures may be barred from BCCC property and BCCC activities and events and may be ineligible for re-enrollment or to be re-hired. If a Respondent completes all requirements to graduate during the grievance process, BCCC **may** hold the Respondent's diploma or certificate until full resolution of the Formal Complaint.

1.13 Privacy and Disclosure

Except as may be permitted by FERPA or as required by law or to carry out any investigation or resolution of sex discrimination or harassment allegations, BCCC will keep private the identity of any individual who has made a report or complaint of sex or gender discrimination or harassment (including any individual who has made a report or filed a Formal Complaint of Sexual Harassment) any Complainant, any Respondent, and any witness.

BCCC may report alleged Sexual Harassment to local law enforcement if warranted by the nature of the allegations at issue, and BCCC administrators will share information regarding alleged Sexual Harassment, as appropriate and necessary, in order to address and resolve the allegation(s) at issue, prevent the recurrence of similar Sexual Harassment, and address the effects of the Sexual Harassment. Additionally, information regarding alleged Sexual Harassment may be used as a statistical, anonymous report for data collection purposes under the Clery Act.

To comply with FERPA, Title IX, and other applicable laws and to provide an orderly process for the presentation and consideration of relevant information without undue intimidation or pressure, grievance processes carried out under these Grievance Procedures are not open to the general public. Accordingly, documents prepared in connection with such processes; documents, statements, or other information introduced in interviews, meetings, and proceedings; and the final outcome letter may not be disclosed outside of those processes except as may be required or authorized by law.

As permitted by and subject to the limitations of FERPA, BCCC reserves the right to notify parent(s) or guardian(s) of a student Respondent of the outcome of any investigation involving that Respondent, redacting names of any other students who do not consent to the disclosure of their information. At the written request of a party, BCCC may include a party's advisor on communications and share access to documents, including the investigation report. This access is subject to the advisor's acknowledgment and agreement to maintain the confidentiality of the documents.

While BCCC strongly encourages parties to maintain privacy in connection with a grievance process, BCCC does not prohibit parties from discussing the allegations under investigation or in any way inhibit the parties from gathering or presenting relevant evidence. In addition, BCCC's policy does not prohibit disclosure of the final outcome letter by either the Complainant or the Respondent.

1.14 Conflicts of Interest, Bias, and Training

BCCC will ensure that any individual designated by BCCC as a Title IX Coordinator, investigator, decision-maker, or informal resolution facilitator under these Grievance Procedures does not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent.

If any employee designated to participate in the investigation or resolution of a Formal Complaint is the Respondent or a relevant witness, then the Title IX Coordinator will appoint another employee to perform their duties. (If the Title IX Coordinator is the Respondent, then the President will appoint another employee to perform their duties.)

BCCC also ensures that Title IX Coordinators, investigators, decision-makers, advisors, and informal resolution facilitators receive training, as applicable, on the definition of Sexual Harassment; the scope of BCCC's Education Program or Activity; how to conduct an investigation and grievance process, including hearings, appeals, and informal resolution processes, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

BCCC further ensures that decision-makers receive training on issues of relevance of questions and evidence, including when questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, and that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence. Additionally, BCCC ensures that decision-makers receive training on any technology to be used at live hearings.

Materials used to train Title IX Coordinators, investigators, decision-makers, advisors, and informal resolution facilitators will not rely on sex stereotypes and promote impartial investigations and adjudications of Formal Complaints of Sexual Harassment.

1.15 Burden of Proof

At all times, the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on BCCC, not on either of the parties.

1.16 Presumption of No Responsibility until Determination

Respondents are presumed not to be responsible for alleged Sexual Harassment until BCCC makes a determination regarding responsibility pursuant to these Grievance Procedures.

1.17 Objective Evaluation of All Relevant Evidence; Credibility Determinations

The investigators and decision-makers under these Grievance Procedures will objectively evaluate all relevant evidence, including both inculpatory and exculpatory evidence, and will not make any credibility determinations based on a person's status as a Complainant, Respondent, or witness.

1.18 Academic Freedom

BCCC affirms its commitment to academic freedom but notes that academic freedom does not allow any form of Sexual Harassment. BCCC recognizes that an essential function of education is a probing of opinions and an exploration of ideas, some of which, because they are controversial, may cause students and others discomfort. This discomfort, as a product of free academic inquiry within a faculty member's area(s) of expertise, shall in no way be considered or construed to constitutes Sexual Harassment. Academic inquiry may involve teaching, research and extramural speech. Furthermore, nothing in this document shall be interpreted to prohibit bona fide academic requirements for a specific BCCC program or activity. When investigating complaints that a party or the Title IX Coordinator believes may involve issues of academic freedom, the Title IX Coordinator will consult with the Vice President of Academic Affairs with respect to contemporary academic practices and standards.

1.19 Documentation

BCCC will retain documentation (including but not limited to any Formal Complaint, notifications, recording or transcripts of interviews, investigative report, written findings of fact, petitions for appeal, notifications of decisions (including the final outcome letter), audio recordings of hearings, and written communication with the Complainant and Respondent), for no less than seven years.

1.20 Consolidation of Formal Complaints

BCCC may consolidate Formal Complaints as to allegations of Sexual Harassment against more than one Respondent, by more than one Complainant against one or more Respondents, or by one party against the other party where the allegations of Sexual Harassment arise out of the same facts or circumstances. Where a grievance process involves more than one Complainant or more than one Respondent, references in these Grievance Procedures to the singular "party," "Complainant," or "Respondent" include the plural, as applicable.

1.21 Individuals with Disabilities

BCCC will make arrangements to ensure that individuals with disabilities are provided appropriate accommodations, to the extent necessary and available, to participate in BCCC's grievance processes. Student requests for accommodation must be made to the Coordinator of Accessibility Services at (252) 940-6313 or in person in Building 9, Room 923, or a designee as determined by the Title IX Coordinator.

2. THE INVESTIGATION

2.01 Appointment of Investigators and Challenging of the Same

Unless a Formal Complaint is dismissed or the parties elect to participate in informal resolution, the Title IX Coordinator will promptly appoint one or more investigators. These investigators may be BCCC employees, non-employees, or a combination of the two. The Title IX Coordinator will contemporaneously share their names and contact information with the Complainant and Respondent and also will forward a copy of the Formal Complaint to the investigators.

Within five days of such appointment, the Complainant or the Respondent may identify to the Title IX Coordinator in writing any alleged conflicts of interest or bias on the part of the assigned investigators. The Title IX Coordinator will consider such statements and will promptly assign different investigators if the Title IX Coordinator determines that a material conflict of interest or material bias exists.

2.02 The Investigators' Activities

Upon receipt of the Formal Complaint, the investigators will promptly begin their investigation, taking such steps as interviewing the Complainant, the Respondent, and witnesses (including expert witnesses, where applicable); summarizing such interviews in writing; collecting and reviewing relevant documents; visiting, inspecting, and taking or reviewing photographs of relevant sites; and collecting and reviewing other relevant evidence.

2.03 The Investigative Report and Evidence Review

The investigators will prepare a written investigative report that fairly summarizes relevant evidence and includes items such as the Formal Complaint, written statements of position, summaries or transcripts of all interviews conducted, photographs, descriptions of relevant evidence, and summaries or copies of relevant electronic records.

Prior to the completion of the investigative report, the investigators will send to each party and the party's advisor, if any, an electronic or hard copy of any evidence obtained during the investigation that is directly related to the allegations raised in the Formal Complaint, including (1) any evidence upon which BCCC does not intend to rely in reaching a determination regarding responsibility; and (2) both inculpatory and exculpatory evidence.

The parties have ten days from the time that the evidence is provided to submit to the investigators a written response to the evidence. In the response, the parties may address the relevancy of any evidence that the parties believe should be included in or excluded from the investigative report and may also address any further investigation activities or questions that they believe are necessary. If a party wishes to submit additional evidence at this stage, they should explain how the evidence is relevant and why it was not previously provided.

The investigators will review and consider the parties' written submissions and may conduct additional investigative activities as appropriate prior to finalizing the investigative report. The need for additional investigative activities may result in a delay or extension to the timelines set forth in these Grievance Procedures.

At least ten days prior to the hearing, the investigators will send an electronic or hard copy of the investigative report to each party and the party's advisor, if any. Any response a party wishes to make to the investigative report may be included in that party's pre-hearing statement, which is discussed more below in Section 3.04.

Due to the sensitive nature of the investigative report, neither the parties nor their advisors may copy, publish, photograph, print, image, record or in any other manner duplicate the report. Parties who violate these restrictions may be disciplined, and advisors who violate these restrictions may be disciplined and/or be barred from further participation in the grievance process.

Nothing in this document restricts the ability of either party to discuss the allegations under investigation or to gather, preserve, and/or present relevant evidence.

2.04 Submission of Evidence; Expert Witnesses

Any evidence that the parties wish for the hearing officer to consider should be presented to the investigators as early as possible during the investigation process. Evidence that is not submitted in a timely manner and prior to finalization of the investigative report may be excluded from the hearing at the discretion of the hearing officer.

Similarly, all relevant witnesses should be identified to the investigators as early as possible during the investigation. The hearing officer generally will not call or consider written statements from witnesses who were not identified to investigators and interviewed during the investigation. However, in their discretion and for good cause, the hearing officer may choose to consider information from witnesses who were not interviewed during the investigation.

Any party who wishes to present testimony from an expert witness should identify that witness by providing the witness's name, contact information and a summary of (1) the witness's qualifications to offer expert testimony; and (2) any opinions the witness expects

to offer related to the allegations or evidence. Any evidence upon which the witness relies must be provided to the investigators and will be made available to the other party and their advisor, as well as to any expert witness the other party has identified. This information must be provided as early as possible in the investigation and in no event later than finalization of the investigative report. The parties must make any expert witnesses available to be interviewed by investigators and to testify at the hearing. If an expert witness is not available to provide live testimony at the hearing, the hearing officer must disregard any information submitted by that expert.

2.05 Treatment Records

BCCC will not access, consider, disclose, or otherwise use in a grievance process any of a party's treatment records that are maintained by a physician, psychiatrist, psychologist or other recognized professional or paraprofessional acting in their professional/paraprofessional capacity unless the party provides voluntary, written consent.

3. HEARING AND APPEALS

3.01 The Formal Resolution Process

Unless a Formal Complaint is dismissed or the parties elect to participate in informal resolution pursuant to section 2.D.01 below, following the investigation the appointed hearing officer will conduct a hearing in which they may question the Complainant, the Respondent, and any witnesses whose testimony the hearing officer deems relevant. During the hearing, the hearing officer and the parties may also question the investigators as necessary to clarify information provided in the investigative report.

3.02 Appointment of the Hearing Officer Panel and Challenging of the Same

The Title IX Coordinator will appoint a three-person hearing officer panel who will administer the hearing, serve as the decision-makers regarding responsibility, and (as applicable) recommend sanctions. The hearing officer panel may consist of BCCC employees or non-employees. The hearing officer panel will select one of their three members to serve as the panel lead and communicate this appointment to the Title IX Coordinator. The Title IX Coordinator will contemporaneously share the names and contact information of the hearing officer panel with the Complainant and the Respondent. The Title IX Coordinator will provide to the hearing officer panel the Formal Complaint, all evidence directly related to the allegations, the parties' written responses to the evidence, and the investigative report.

Within two days of such appointment, the Complainant or the Respondent may identify to the Title IX Coordinator in writing any alleged conflicts of interest or bias on the part of the members of the hearing officer panel. The Title IX Coordinator will carefully consider such statements and will promptly assign a different hearing officer to serve as a member of the panel if the Title IX Coordinator determines that a material conflict of interest or material bias exists.

3.03 Notice of the Hearing

Promptly after the appointment of the hearing officer panel and no less than ten days prior to the hearing, the hearing officer panel will provide concurrent written notice to the Complainant and the Respondent setting forth the date, time, and location of the hearing. Any modifications to the hearing date, time, or location will be provided in writing to both parties prior to the date of the hearing.

3.04 Pre-Hearing Submissions

Each party may submit a written statement to the hearing officer panel that includes any response the party wishes to make to the investigative report. Each party's pre-hearing statement must be submitted at least five days prior to the hearing. The hearing officer panel will share the statement with the other party, who may submit a response within five days.

3.05 Failure to Appear

If any party, advisor, or witness fails to appear at the hearing after having been provided proper notice of the hearing as set forth above, then absent extenuating circumstances the hearing officer panel will proceed with the hearing and issuance of their responsibility determination and, as applicable, sanction recommendation. BCCC will provide an advisor to any party who attends the hearing unaccompanied.

3.06 Evidentiary Matters

A Title IX hearing does not take place within a court of law and is not bound by rules of evidence.

Evidence of and questions about the Complainant's sexual predisposition or prior sexual behavior are not relevant and will not be permitted at the hearing, with the following exceptions: (1) if the 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 (2) 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.

Evidence regarding the past sexual activity of the Respondent (regardless of whether the Respondent was formally investigated or found responsible for such conduct) may be permitted to show that the Respondent has engaged in a pattern of behavior similar to the alleged Sexual Harassment at issue before the hearing officer, provided that the Respondent has not been found "not responsible" by BCCC in a proceeding related to such conduct

BCCC will not access, consider, disclose, or otherwise use in a grievance process any party's treatment records that are maintained by a physician, psychiatrist, psychologist or other recognized professional or paraprofessional acting in their professional/paraprofessional capacity unless the party provides voluntary, written consent. Questions and/or evidence that constitute or seek disclosure of information protected under a legally recognized privilege are not permitted, unless the person holding the privilege has waived the privilege in writing.

BCCC will make the evidence that the investigators provided to the parties for their review and inspection prior to finalization of the investigative report available at the hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

3.07 Conduct of the Hearing and Questioning of Witnesses and Parties

The hearing will be conducted with parties in separate rooms, using technology to ensure that each party can see and hear any party or witness answering questions. At the discretion of the hearing officer panel, the hearing may be conducted partially or entirely remotely, with any or all participants participating virtually. The hearing panel lead will preside over the proceedings.

The Complainant and the Respondent will have equal opportunity to address the hearing officer panel, if desired, and both the hearing officer panel and the parties' advisors will have the opportunity to question the other party and any witnesses, including investigators and expert witnesses. The hearing officer panel, facilitated by the hearing officer panel lead, will first ask any questions of each party and each witness through direct examination. After the hearing officer panel has completed direct examination, the advisor for each party will have an opportunity to conduct a cross-examination of the other party and/or the witnesses. Any questions that a party has for a witness or the other party must be posed by the party's advisor. A party's advisor will not have the opportunity to question the party for whom they serve as advisor.

Before a party or witness answers a cross-examination question, the hearing officer panel will determine whether the question is relevant and allowed under these Grievance Procedures. For example, the hearing officer panel may exclude as not relevant duplicative questions or questions posed solely to harass a witness or the other party. The hearing officer panel will explain any decision to exclude a question.

If a party does not have an advisor present at the hearing, BCCC will provide an advisor, at no cost to the party, to conduct cross-examination on behalf of that party.

Members of the BCCC community are expected to provide truthful testimony, and any member of the BCCC community who knowingly provides false information during this process is subject to disciplinary action by the college.

3.08 Unavailability or Refusal to Testify or Submit to Cross-Examination

The Respondent and/or the Complainant may choose not to testify at the hearing; however, the exercise of that option will not preclude the hearing officer panel from making a responsibility determination. If a party or witness does not submit to cross-examination at the hearing, in reaching a responsibility determination, the hearing officer panel may afford relevant statements made by that party or witness the weight that the hearing officer deems appropriate, taking into consideration factors such as the nature of the statement, the context in which the party or witness made the statement, and any other factor the hearing officer deems appropriate. The hearing officer panel will not draw an inference regarding responsibility or sanctions based solely on a party's or witness' absence from the hearing or refusal to testify or submit to cross-examination.

3.09 Recording

BCCC will record the hearing. This recording will be the only recording permitted of the proceedings and will be the property of BCCC. The parties and the appeal officer may use the recording as part of the appeal process. Reasonable care will be taken to ensure a quality recording; however, technological problems that result in no recording or in an inaudible one will not affect the validity of the outcome of a hearing.

3.10 The Determination of the Hearing Officer Panel Regarding Responsibility

Following the hearing, the hearing officer panel will determine whether the evidence establishes that it is more likely than not[1] that the Respondent committed Sexual Harassment. The hearing officer panel will render a finding of "Responsible" or "Not Responsible" and will provide the rationale for the decision. If the Respondent is found "Responsible," the hearing officer panel will specify the specific type(s) of Sexual Harassment for which the Respondent is found "Responsible" (for example, Sexual Assault, Stalking, etc.). When feasible, the hearing officer panel will orally communicate the finding of "Responsible" or "Not Responsible" to the parties within two days. Additional information regarding the decision, including the rationale and sanctions (if applicable) will be communicated in the final outcome letter (as described below).

3.11 The Recommendation of the Hearing Officer Panel Regarding Sanctions

If the hearing officer panel determines that the Respondent is "Responsible," they will recommend appropriate sanctions to be imposed on the Respondent.

Sanctions following a finding of responsibility depend upon the nature and gravity of the misconduct, any record of prior discipline, or both. Sanctions for employees may include, but are not limited to, withholding a promotion or pay increase, reassigning employment, terminating employment, temporary suspension without pay, and compensation adjustments.

Sanctions for students may include, but are not limited to, expulsion or suspension from BCCC, disciplinary probation, social restrictions, suspension or revocation of admission, and suspension or revocation of degree.

Other potential sanctions for Respondents may include, but are not limited to, written warning, mandated counseling, completion of an intervention program, completion of violence risk assessment, parental notification, and/or education sanctions (such as community service, reflection paper(s), and/or fines) as deemed appropriate by the hearing officer panel.

In recommending sanctions, the hearing officer panel will consider whether a sanction will bring an end to, prevent a recurrence of, and remedy the effects of the Sexual Harassment. The hearing officer panel also will consider the impact of separating a

[1] In other words, the standard of proof will be the preponderance of the evidence standard.

student from his/her education. The appropriate sanctions for Sexual Assault generally will include at a minimum a period of separation from BCCC.

3.12 Review of Sanctions

The hearing officer panel will forward their sanctions recommendation to the Title IX Coordinator, who will share it with Vice President of Student Services (in cases involving student Respondents), Vice President of Academic Affairs (in cases involving faculty Respondents), or the supervising Vice President or a designee (in cases involving staff Respondents). These individuals will consider the recommendation in the context of the sanctioning guidelines, the Respondent's disciplinary history, the institution's handling of similar cases, and other relevant factors.

3.13 Implementation of Sanctions

Sanctions generally are effective immediately upon issuance of the final outcome letter described below. However, if necessary to protect the welfare of the Complainant, Respondent, or BCCC community, the hearing officer panel may recommend and/or the Title IX Coordinator may determine that any sanctions are effective at any time after the conclusion of the hearing and continue in effect until the issuance of the final outcome letter.

3.14 Final Outcome Letter

Within seven days after the hearing, the hearing officer panel will issue a final outcome letter through the Title IX Coordinator to the Respondent and Complainant simultaneously.

The final outcome letter will (1) name the Respondent; (2) identify the allegations potentially constituting Sexual Harassment; (3) describe procedural steps taken from the filing of the Formal Complainant through the determination; (4) provide findings of fact in support of the hearing officer's determination; and (5) provide a statement of rationale for the result as to each allegation, including the responsibility determination and any sanctions.

3.15 Appeals

The Complainant or the Respondent may appeal the decision of the hearing officer panel regarding responsibility and/or the sanction(s) imposed on the Respondent.

The following are the only permissible grounds for an appeal of the hearing officer panel's responsibility determination: (1) procedural irregularity that affected the outcome; (2) new evidence that was not reasonably available at the time of the determination and that could affect the outcome; and (3) the Title IX Coordinator, an investigator, or a member of the hearing officer panel had a conflict of interest or bias that affected the outcome.

Sanctions may only be appealed on the ground that the severity is incommensurate to the gravity of the Sexual Harassment for which the Respondent was found responsible.

Appeals must be submitted in writing to the Title IX Coordinator within seven days from the date of the final outcome letter. The Title IX Coordinator will promptly inform the other

party of the filing of the appeal within two days of receiving the appeal. The other party will have three days from such notification to submit a written response to the appeal.

3.16 Appointment of the Appeal Officer and Challenging of the Same

Upon receipt of an appeal, the Title IX Coordinator, in consultation with the Vice President of Student Services (if the Formal Complaint involves students), the supervising Vice President or a designee (if the Formal Complaint involves staff) and/or the Vice President of Academic Affairs (if the Formal Complaint involves faculty) will appoint an appeal officer.

Within two days of such appointment, the Complainant or the Respondent may identify to the Title IX Coordinator in writing alleged conflicts of interest or bias posed by assigning that appeal officer. The Title IX Coordinator will carefully consider such statements and will promptly assign a different appeal officer if the Title IX Coordinator determines that a material conflict of interest or material bias exists.

3.17 Appeal Review

The Title IX Coordinator will share the Formal Complaint, the investigative report, the hearing recording, all statements introduced at the hearing, any other evidence considered by the hearing officer panel, the hearing officer panel's written findings, and the written appeal submissions with the appeal officer. In addition, if an appeal raises procedural issues, the Title IX Coordinator may provide the appeal officer additional information relevant to those issues.

Within ten days of the receipt of the appeal the appeal officer will determine (a) that the decision of the hearing officer should stand; or (b) that the decision of the hearing officer should be overturned and will issue a written explanation of that result and the rationale behind it.

In the event that the appeal officer determines that the decision of the hearing officer should be overturned, the appeal officer will specify, after consultation with the Title IX Coordinator and other BCCC administrators as necessary, the appropriate steps to be taken to come to a final resolution of the Formal Complaint (which may include another hearing before the same hearing officer panel or a different one).

4. INFORMAL RESOLUTION

4.01 Determination of Formal Versus Informal Resolution

At any time before the issuance of the hearing officer's responsibility determination, the parties may elect to resolve their Formal Complaint through the informal resolution process, provided that (1) the parties both voluntarily consent in writing to such resolution; (2) both parties are students or employees of BCCC; and (3) the Title IX Coordinator determines that informal resolution is an appropriate mechanism for resolving that specific Formal Complaint. Otherwise, a Formal Complaint that is not dismissed will proceed to a hearing. Informal resolution is not an appropriate mechanism for resolving a Formal Complaint by a student against an employee.

Informal resolution may not be selected for less than all of the misconduct alleged in the Formal Complaint. If the parties agree to informal resolution (and informal resolution is appropriate for all of the allegations at issue), then all of the allegations must be resolved according to the informal resolution process.

Either party has the right to terminate the informal resolution process at any time and proceed with formal resolution (i.e., a full investigation and hearing). Furthermore, the Title IX Coordinator may, where appropriate, terminate informal resolution and proceed with the formal resolution process instead.

4.02 Notice of Allegations and Notice of Informal Resolution and Facilitator

The Title IX Coordinator will provide the parties a written notice disclosing the Formal Complaint's allegations and the requirements of the informal resolution process, including any circumstances under which BCCC would preclude the parties from resuming a Formal Complaint arising from the same allegations.

When the Formal Complaint is to be resolved according to the informal resolution process, the Title IX Coordinator will designate a trained individual to serve as the informal resolution facilitator. The Title IX Coordinator will contemporaneously share the name of the informal resolution facilitator with the Complainant and the Respondent.

Within two days of such notification, the Complainant or Respondent may identify to the Title IX Coordinator in writing alleged conflicts of interest or bias posed by assigning that facilitator. The Title IX Coordinator will carefully consider such statements and will promptly assign a different facilitator if the Title IX Coordinator determines that a material conflict of interest or material bias exists.

4.03 Facilitated Resolution

The informal resolution facilitator will meet separately with each party to review the informal resolution process and the allegations in the Formal Complaint and to identify the outcome that each party seeks from the informal resolution process. If the facilitator determines that it would be productive for both parties to attend a resolution meeting, the facilitator will provide written notice to the Complainant and the Respondent setting forth the date, time, and location of that meeting. At the request of either party or at the discretion of the informal resolution facilitator, the meeting may occur with the parties in different locations or meetings with parties may take place on different dates.

Both the Complainant and the Respondent are expected to participate in the informal resolution process. If either party fails to participate, the Title IX Coordinator may direct that the Formal Complaint be resolved using a full investigation and hearing or may reschedule the meeting.

During the informal resolution, the parties may: (1) engage one another in the presence of, and/or facilitated by, the informal resolution facilitator; (2) communicate their feelings and perceptions regarding the incident and the impact of the incident (either by communicating directly with one another or by communicating indirectly through the informal resolution facilitator); (3) relay their wishes and expectations regarding the future; and/or (4) come to an agreed-upon resolution of the allegations in the Formal Complaint.

Participation in the informal resolution process is completely voluntary, and either party, the informal resolution facilitator, or the Title IX Coordinator may terminate the process at any time.

4.04 Resolution

The informal resolution facilitator will attempt to facilitate the parties' resolution of the Formal Complaint. If this process results in a resolution between the parties and the Title IX Coordinator finds the resolution to be appropriate under the circumstances (giving consideration to factors including the extent to which the resolution will protect the safety of the Complainant and the entire BCCC community), the resolution will be reduced to writing, which will conclude the process and close the Formal Complaint.

4.05 Written Resolution Agreement

To be effective, any agreement reached during the informal resolution process must be memorialized in writing and signed by the parties, the informal resolution facilitator, and the Title IX Coordinator. If a Respondent completes all measures agreed to in the written resolution agreement, no further process is available with regard to the allegations in the Formal Complaint.

Measures that parties agree to in the informal resolution process may include (but are not limited to):

1) Alcohol education classes for the Respondent;
2) Completion of online sexual harassment training;
3) Completion of an intervention program;
4) Regular meetings with an appropriate individual, unit or resource;
5) Permanent or temporary no contact order;
6) Restrictions for participation in certain activities, organizations, programs or classes;
7) Restriction of participation in certain events;
8) Reflection paper or written apology;
9) Counseling sessions; or
10) The Respondent's completion of an educational or behavioral plan.

4.06 Termination of Informal Resolution Process

At any time prior to completing a written resolution agreement, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the Formal Complaint. If either party terminates the informal resolution process or BCCC determines that the informal resolution process is no longer appropriate, the formal resolution process outlined above will promptly resume.

4.07 Confidentiality of Information Shared

Any information that the parties share during the informal resolution process may not be used in any other investigation or proceeding at BCCC.

4.08 Timeframe

The informal resolution process generally will be completed within thirty calendar days of the parties' agreement to the informal resolution process.

4.09 Appeal

A resolution reached pursuant to the informal resolution process is final and not subject to appeal.

4.10 Records

A resolution reached through the informal resolution process will not be included in a student Respondent's student conduct record or in an employee Respondent's personnel record, unless the inclusion of such information is agreed to as part of the informal resolution of the matter. The Title IX Coordinator will retain a record of the written resolution agreement for no less than seven years.

References

Legal References: *Enter legal references here*

Cross References:

History

Leadership Council Review/Approval Dates: *3/14/2025*

Senior Staff Review/Approval Dates: *7/21/20, 8/25/20, 08/31/2021; 2/5/2025*

Board of Trustees Review/Approval Dates: **[BoT Review/Approval Date]**

Implementation Dates: *Enter date(s) here*