

An aerial photograph of the Hampden-Sydney College campus during autumn. The image shows several large, multi-story brick buildings with blue roofs, surrounded by dense trees with vibrant yellow and orange foliage. A winding road and a parking lot are visible on the left side. The overall scene is bright and scenic.

***Grievance Committee
Training: Harassment
& Discrimination - 2024***

Hampden-Sydney College

TOPICS TO BE COVERED – SESSION 2

- Formal Complaint Resolution – Hearings
- Hearing panel report
- Sanctions
- Appeals
- Prohibitions on Retaliation

FORMAL COMPLAINT RESOLUTION – THE HEARING PANEL & HEARINGS: STUDENT RESPONDENTS

- Hearing Purpose – to make a determination of responsibility for allegations in the Complaint.
- Hearings are scheduled as soon as practicable after each party in a Complaint has had an opportunity to review the Investigative Report.
- Hearings are an **Administrative Process**, not criminal, or civil, and do not follow federal criminal or civil rules of procedure. The rules for the Administrative process are established by Title IX Regulations. And HSC chooses to utilize the same processes for Complaints involving other types of discrimination prohibited under College Policy.
- The standard of evidence used for determining responsibility is **Preponderance of the Evidence**: to prove that something is more likely than not.
- The Assigned Coordinator appoints members of the Hearing Panel. One faculty member from the Grievance Committee chairs the Panel. The second panel member will be from a pool of staff trained to adjudicate HDSM complaints under this Policy. The Student Court Chair, or another member of the Student Court serves as the third member of the Panel.
- An investigator in a Complaint will not serve on a Hearing Panel for that Complaint.

FORMAL COMPLAINT RESOLUTION – HEARINGS

- Promptly after appointing Hearing Panel members, the Assigned Coordinator provides simultaneous written notice to the Complainant and the Respondent, identifying the individuals who will serve on, and chair the Hearing Panel.
- Within 3 days either the Complainant or the Respondent may challenge the participation of any, or all of the members of the Hearing Panel for having a conflict of interest, or for having a bias against Complainants or Respondents generally, or for having a bias against a specific Complainant or Respondent.
- The Assigned Coordinator evaluates any specific objections that are raised by either party and determines whether or not to replace Hearing Panel members.
- Hearing Panel members receive the following documentation from the Assigned Coordinator: the Complaint, the Respondent's written response to the Complaint, the investigative report, and any written responses that the parties submit regarding the investigative report.

HEARING POLICIES AND PROCEDURES

- Both the Complainant and Respondent may submit written materials for the Hearing. These may include names and contact information for witnesses with knowledge relevant to the Complaint, as well as expert witnesses. The College may not be able to compel witnesses to appear at a hearing, and the failure of a witness to appear shall not invalidate the complaint resolution process.
- The Assigned Coordinator will send a list of all hearing witnesses to each of the parties in the Complaint.
- Failure to Appear. Unless there are extenuating circumstances, if either the Complainant or the Respondent fails to appear before the Hearing Panel, the Hearing Panel will proceed to resolve the Complaint based on evidence and testimony of those who are available to testify.
- Requests for language or disability accommodations should be submitted to the Assigned Coordinator at least 3 days prior to the Hearing.

HEARING POLICIES AND PROCEDURES

- Live Hearings -- Hearings are conducted in real time. The default hearing procedure is for the Hearing Panel, the Complainant and their Advisor, the Respondent and their Advisor, and any witnesses to participate virtually utilizing technology that allows the hearing participants to see and hear each other.
- The Complainant and the Respondent should not contact each other or members of the Hearing Panel outside of the hearing.
- Both parties have equal opportunities to present evidence during the hearing.
- In complaints alleging sexual misconduct, questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless they are being introduced into the record for the purpose of proving that someone other than the Respondent committed the alleged conduct, or 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.

HEARING POLICIES AND PROCEDURES

- A Hearing is open to a limited number of individuals, including the members of Hearing Panel, the Assigned Coordinator, the Complainant, the Respondent, and their respective Advisors. Witnesses will only be present for their own interviews.
- Both the Complainant and the Respondent will be provided equal opportunities to make opening and closing statements, to present witnesses, including fact and expert witnesses, and to proffer inculpatory and exculpatory evidence.
- The Hearing Panel will have an opportunity to ask questions of the parties and the witnesses in order to develop evidence through testimony. The Chair of the Hearing Panel will resolve any questions concerning procedure or the admission of evidence or testimony (including the relevancy and reliability of the evidence and testimony).
- All witnesses are expected to provide truthful testimony. HSC students are bound by the Honor Code.

HEARING POLICIES AND PROCEDURES: CROSS EXAMINATIONS

- In addition to questions posed by the Hearing Panel, each party's Advisor will have an opportunity to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.
- Both the Complainant and the Respondent will submit their preliminary lists of cross-examination questions in writing to the Assigned Coordinator 48 hours prior to the commencement of the hearing.
- Before a Complainant, Respondent, or witness answers a cross-examination or other question, the Hearing Panel Chair will first determine whether the question is relevant and explain any decision to exclude a question deemed as not relevant.
- The Hearing Panel Chair oversees cross-examination in order to proscribe aggressive or abusive questioning of any party or witness.

HEARING POLICIES AND PROCEDURES: ADVISORS

- If a party does not have an Advisor present at the live hearing the College will provide one without fee from a pool of faculty and staff trained to serve as Advisors.
- The Advisor will conduct cross-examinations on the party's behalf.
- Requests for an Advisor should be made in writing to the Assigned Coordinator 7 days prior to the Hearing date, unless extenuating circumstances exist.

HEARING OUTCOME

- A majority vote of the Hearing Panel determines whether the evidence presented at the hearing, information provided in the investigative report, the parties' written statements (if any), and witness testimony supports a finding, based on a preponderance of the evidence, that the Respondent engaged in the alleged HDSM.
- The Hearing Panel immediately reports their findings and rationale, along with recommended sanctions, if applicable, to the Assigned Coordinator.
- The Assigned Coordinator simultaneously reports the findings of the Hearing Panel to the Complainant and Respondent.

HEARING PANEL'S WRITTEN DETERMINATION

- **The Hearing Panel's Determination includes the following information:**
 - 1) Allegations of HDSM that constitute the Complaint;
 - 2) The procedural steps taken by the College from the receipt of the Complaint through the determination;
 - 3) Findings of fact supporting the Hearing Panel's determination;
 - 4) Conclusions regarding this Policy's application to the facts;
 - 5) A rationale for the determination of responsibility made in each allegation;
 - 6) Recommended disciplinary sanctions to be imposed on the Respondent (if applicable);

HEARING PANEL'S WRITTEN DETERMINATION

- 7) A list of any remedies provided by the College to the Complainant that are designed to prevent HDSM from being a factor in the terms and conditions of an employee's employment, as well as restore or preserve equal access to the College's education programs or activities; and
 - 8) the College's appeals procedures and bases for appeals.
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- The Hearing Panel Chair, or their designee, will draft the first 6 points. The Assigned Coordinator completes the written determination by adding points 7 and 8.
 - If no appeal is filed, the written determination becomes a final determination on the date on which options to appeal expire.
 - If an appeal is filed, the written determination becomes a final determination when the result of the appeal is issued.

HEARING PROCEDURES FOR COMPLAINTS INVOLVING A STAFF OR THIRD PARTY RESPONDENT

- The hearing process and procedures are the same as those in which a student is the Respondent, except as follows.
- The Hearing Panel includes at least one tenured faculty member from the faculty Grievance Committee. Staff appointees come from a pool of staff trained to adjudicate HDSM complaints.
- The members of the Hearing Panel elect their own Chair.
- A staff member will not serve on the Hearing Panel if the Respondent or Complainant is someone to whom the staff member reports.
- The College may have limited authority to conduct hearings or carry out internal discipline against third- party Respondents (i.e., those who are not enrolled at or employed by the College). Regardless, the College will investigate complaints filed and implement appropriate remedies to redress the effects of HDSM on the Complainant and the College community.

HEARING PROCEDURES FOR COMPLAINTS INVOLVING A FACULTY MEMBER AS A RESPONDENT – TERMINATION *NOT* A POTENTIAL SANCTION

- The hearing process and procedures are the same as those in which a student is the Respondent, except as follows.
- Decisions about whether or not termination is a potential sanction are made during a consultation between the Assigned Coordinator and the Dean of Faculty.
- The Assigned Coordinator will appoint three tenured faculty members from the Faculty Grievance Committee to the Hearing Panel. The members of the Hearing Panel will elect their own Chair.

HEARING PROCEDURES FOR COMPLAINTS INVOLVING A FACULTY MEMBER AS A RESPONDENT – TERMINATION *NOT* A POTENTIAL SANCTION

- Before reaching its determination, in complaints in which a faculty member is a Respondent, the Hearing Panel considers whether the charges in the Complaint arise from conduct that is protected under the faculty member's rights to Academic Freedom, as stated by the American Association of University Professors in The 1940 Statement of Principles on Academic Freedom and Tenure.
- Academic Freedom: Faculty are entitled to full freedom in research and the publication of the results. They are entitled to freedom in the classroom in discussing their subject, but should not introduce into their teaching controversial matter which has no relation to their subject.
- Resources on Academic Freedom: <https://www.aaup.org/our-programs/academic-freedom/resources-academic-freedom>

HEARING PROCEDURES FOR COMPLAINTS INVOLVING A FACULTY MEMBER AS A RESPONDENT – TERMINATION *IS* A POTENTIAL SANCTION

- The procedures described here are derived from the 1958 AAUP *Statement on Procedural Standards in Faculty Dismissal Proceedings*. <https://www.aaup.org/report/statement-procedural-standards-faculty-dismissal-proceedings>
- Following the completion of the investigative report, the Assigned Coordinator confers with the Dean of the Faculty who makes a preliminary determination of applicable sanctions if the charges in the Complaint were to be supported by a preponderance of the evidence.
- If the list of sanctions includes either suspension or termination of employment, the Assigned Coordinator provides the President of the College with a copy of the Complaint and the Investigative Report. The Assigned Coordinator and the Dean of the Faculty confer with the President regarding the nature of the charges and the potential sanctions.
- Afterwards, the President meets with the Respondent who may choose to accept responsibility for the charges and to also accept sanctions proposed by the President.
- Alternatively, the Respondent may choose to proceed with a hearing on the Complaint.

HEARING PROCEDURES FOR COMPLAINTS INVOLVING A FACULTY MEMBER AS A RESPONDENT – TERMINATION *IS* A POTENTIAL SANCTION

- The hearing process and procedures are the same as those in which a student is the Respondent, except as follows.
- If the Respondent chooses to proceed with a hearing, the Dean of the Faculty selects three members of the Faculty Grievance Committee to serve on the Hearing Panel, which will elect its own chair.
- If the Hearing Panel will hear only a subset of the initial Complaint, then the President specifies which part(s) of alleged misconduct are the subject of the hearing.
- Before reaching its determination the Hearing Panel considers whether the charges in the Complaint arise from conduct that is protected under the faculty member's rights to Academic Freedom, as stated by the American Association of University Professors in *The 1940 Statement of Principles on Academic Freedom and Tenure*.
- The Hearing Panel immediately reports their findings to the Assigned Coordinator, who reports them to the Dean of the Faculty. The Dean of Faculty simultaneously notifies the Complainant and the Respondent of the determination.

SANCTIONS

- The purpose of the College's response to a finding of HDSM, is to eliminate it, prevent reoccurrences, and remedy its effects. Sanctions are not solely punitive.
- As decision-makers in the complaint resolution process, if a majority of Hearing Panel members conclude that a preponderance of the evidence supports a finding of HDSM under this Policy, they may recommend sanctions.
- Sanctions may be one of multiple College responses to acts of HDSM. Others may include educational interventions, and changes in campus security practices – including increased monitoring of the location(s) where HDSM occurred.
- Sanctions adopted following a finding of HDSM will depend upon the nature and gravity of the charges, any record of prior discipline for HDSM, or both.
- If there is no appeal, sanctions will take effect immediately. In the case of an appeal, sanctions will not be effective until the resolution of the appeal.

SANCTIONS OF STUDENT RESPONDENTS

- The Assigned Coordinator considers any recommendations made by the Hearing Panel and then determines sanctions to be applied to the Respondent.
- Sanctions applied to student-Respondents may include: disciplinary probation, expulsion from campus housing, issuing a no-contact order to the Respondent, mandated counseling, educational sanctions (e.g., bias awareness training), suspension, or expulsion.
- If the allegations in the Complaint include Sexual Violence and the sanction is suspension or expulsion, or if a Respondent withdraws from the College prior to a resolution of a complaint of Sexual Violence, then a notation will be made on the student's academic transcript, as mandated by Virginia law.
- Within 7 days following the conclusion of the hearing, the Assigned Coordinator will issue an **Outcome Letter** simultaneously to each party in the complaint. If sanctions are imposed, the outcome letter will describe the disciplinary actions taken, the date disciplinary actions are imposed, and the duration of the sanction(s).

SANCTIONS OF STAFF OR THIRD-PARTY RESPONDENTS

- Sanctions applied to staff-Respondents may include: issuing a no-contact order to the Respondent, a change in the Respondent's office location, mandated counseling, and/or educational sanctions (e.g., bias awareness training), suspension, or termination from employment.
- Sanctions applied to third-party respondents may include no trespass orders for College-owned property.
- Within 7 days following the conclusion of the hearing, the Assigned Coordinator will issue an Outcome Letter simultaneously to each party in the Complaint. If sanctions are imposed, the outcome letter describes disciplinary actions taken, the date disciplinary actions are imposed, and the duration of the sanction(s).

SANCTIONS OF FACULTY RESPONDENTS

- When the Respondent is a faculty member the Dean of the Faculty will consider the recommendations of the Hearing Panel, and after conferring with the Assigned Coordinator, will determine sanctions to be applied.
- Sanctions applied to faculty-Respondents may include: issuing a no-contact order to the Respondent, a change in the Respondent's office location, mandated counseling, and/or educational sanctions (e.g., bias awareness training). Sanctions may also include suspension or dismissal.
- Within 7 days following the conclusion of the hearing, the Dean of the Faculty issues an **Outcome Letter** concurrently to each party in the Complaint. The outcome letter states (1) the name of the Respondent, (2) the violation(s) of the College's Harassment and Discrimination Policy that are supported by a preponderance of the evidence – or a statement that the Respondent was found not responsible for the violations charged in the Complaint; (3) the rationale for the specific finding(s); and (4) any sanctions imposed on the Respondent. If sanctions are imposed, the outcome letter describes disciplinary actions taken, the date disciplinary actions were imposed, and the duration of sanction(s).

GROUNDS FOR APPEAL

- The Complainant and/or the Respondent may appeal the decision of the Hearing Panel and/or the sanction imposed on the Respondent within 7 days from the date the outcome letter is received. Both the decision of the Hearing Panel and the sanction(s) imposed on the Respondent are open to appeal, and may be appealed simultaneously.
- Appeals of the Hearing Panel's Decision Regarding Responsibility. The only permissible grounds for an appeal are: (1) availability of new germane evidence that was not, despite the due diligence of the parties, available at the time of the hearing; (2) procedural irregularity during the resolution process that affected the outcome of the matter; and/or (3) the Assigned Coordinator, Investigator(s), or Hearing Panel members had a conflict of interest or bias for or against Complainants or Respondents generally, or the individual Complainant or Respondent, that affected the outcome of the complaint resolution process.

GROUNDINGS FOR APPEAL

- Appeals of the Sanctions. The Complainant may appeal on grounds that the sanctions are insufficient to achieve the Policy's goals of eliminating acts of HDSM, preventing reoccurrence of such acts, and remedying the effects of HDSM, and the Respondent may appeal on the grounds that the sanctions are excessive.
- Appeals in Complaints involving Student-Respondents must be made in writing to the Dean of Students, who will notify the Assigned Coordinator that an appeal has been received. The other party in the Complaint may write a response. The Dean of Student's decision is based on a review of evidence from the hearing, including the recording. There is no further appeal.
- Appeals in Complaints involving Staff- or Third-Party Respondents must be made in writing to the Vice President for Business Affairs and Finance, who will notify the Assigned Coordinator that an appeal has been received. The other party in the Complaint may write a response. The Vice President's decision is based on a review of evidence from the hearing, including the recording. There is no further appeal.

GROUNDS FOR APPEALS: FACULTY-RESPONDENT

- Appeals in Complaints involving a Faculty-Respondent, in which suspension or dismissal is not a sanction must be made in writing to the President of the College, who will notify the Assigned Coordinator that an appeal has been received. The other party in the Complaint may write a response.
- After reviewing the evidence from the hearing, including the recording of the hearing, the President will determine if: (1) the decision of the Hearing Panel should stand; or (2) the decision of the Hearing Panel should be overturned; or (3) additional evidence should be obtained before making an appellate decision. If the President decides to overturn the decision of the Hearing Panel, or that additional evidence should be obtained, the President will consult with the Assigned Coordinator on the appropriate steps to take to come to a final resolution of the complaint.
- The President will notify the Assigned Coordinator, the Complainant, and the Respondent simultaneously in writing of the decision and actions to be taken. There is no further appeal.

APPEALS: FACULTY-RESPONDENT WITH SUSPENSION OR DISMISSAL AS A SANCTION

- First Appeal: to the President of the College. Appeals must be made in writing to the President of the College within 7 days from the date the outcome letter is sent. The President will **not** confer with the Dean of the Faculty regarding the appeal (because the Dean determined the sanctions). The President's decision is based on a review of evidence from the hearing, including the recording.
- Second Appeal: to the Executive Committee of the Board of Trustees. The Complainant and/or the Respondent may appeal the decision of the President of the College and/or any sanctions imposed on the Respondent within 7 days from the date they are notified of the President's decision. These decisions may be appealed simultaneously.
- Appeals of the decision of the President must be submitted in writing to the Assigned Coordinator who will transmit the appeal to the Chair of the Board of Trustees, and to the other party (i.e., the Complainant or the Respondent). The Assigned Coordinator will send the members of the Executive Committee of the Board copies of the complaint, the investigative report, and evidence presented to the Hearing Panel, the recording of the hearing and the first appeal to the President. The Executive Committee of the Board of Trustees will not confer with the President of the College or the Dean of the Faculty regarding the appeal.

APPEALS: FACULTY-RESPONDENT WITH SUSPENSION OR DISMISSAL AS A SANCTION

- After review the evidence and the written appeal(s) The Board Chair will notify the President of the College, the Dean of the Faculty, the Assigned Coordinator, the Complainant, and the Respondent simultaneously of the decision the Executive Committee of the Board and actions to be taken. There is no further appeal.

PROHIBITION OF RETALIATION

- Retaliation includes intimidation, threats, or coercion of individuals for the purpose of interfering with any rights or privileges under this Policy, or because an individual has made a report or complaint under this Policy or has participated, or refused to participate in any manner in a HDSM investigation or hearing.
- Complaints alleging retaliation may be filed according to the complaint resolution procedures for HDSM specified in the Policy.

TALK TO A TITLE IX TEAM MEMBER

- Dr. Melissa Wood – Title IX Coordinator
mwood@hsc.edu - 434.223.6061
- Mrs. Sue Carter (staff and students)
svcarter@hsc.edu – 434.223.6220
- Dr. Rebecca Jayne (faculty)
rjayne@hsc.edu – 434.223.6118