

March 3, 2021



COLORADO
COMMUNITY COLLEGE SYSTEM

CCCS Live Hearing Training

Investigator/Witness Role

Presented by: Tashana Taylor, CCCS Director of Civil Rights and Investigations

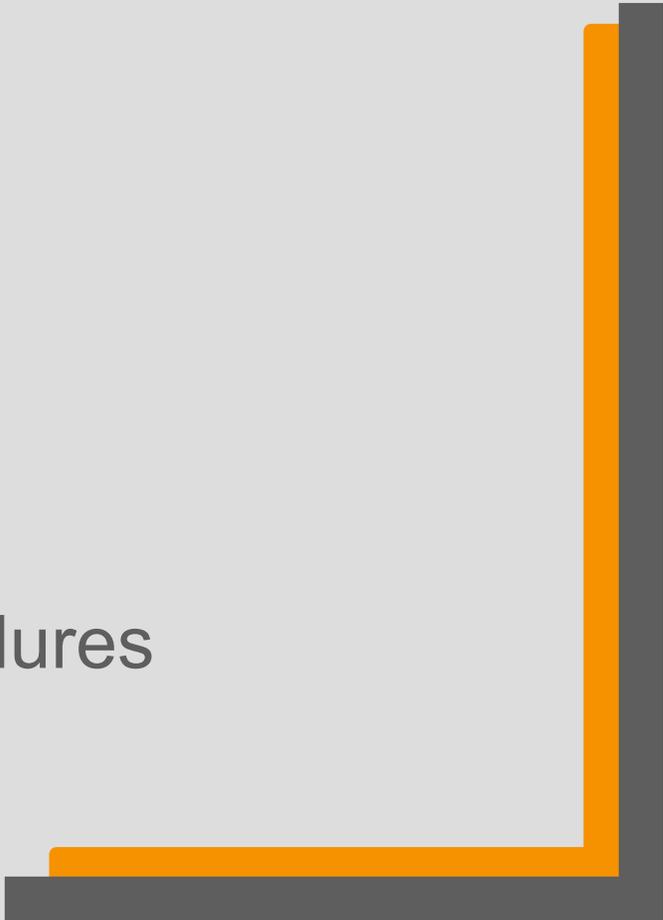
AGENDA

- Refresher: BP & SP 19-60 vs. Repealed BPs/SPs
- Refresher: Investigations, Live Hearings, & Appeals
- Live Hearings: Roles & Responsibilities
- Live Hearings: The Logistics
- Witness Prep & Mock Cross-Examination
 - *Presented by: Mary Nero and Molly Moats, CCCS Associate General Counsel*
- Questions?



Refresher

Board Policies & System Procedures



NEW: Board Policy 19-60

Prohibition of Discrimination, Harassment or Retaliation

- *BP 19-60 states:*
 - Individuals affiliated with CCCS shall not discriminate or harass on the basis of sex, gender, race, color, age, creed, national or ethnic origin, ancestry, physical or mental disability, familial status, veteran or military status, pregnancy status, religion, genetic information, gender identity, sexual orientation, or any other protected class, in connection with employment practices or educational programs and activities (including in admissions).
 - Individuals shall not retaliate against any person who opposes discrimination, harassment or retaliation, or participates in any complaint or investigation process.

Applies to all conduct alleged to have occurred on or after August 12, 2020

NEW: System Procedure 19-60

Civil Rights and Sexual Misconduct Resolution Process

- Defines the process by which CCCS shall respond to allegations of discriminatory, harassing, and/or retaliatory behavior, including Sexual Misconduct.
- Appendix A: Provides definitions applicable to the procedure.
- Appendix B: Details Compliance Requirements, such as training requirements and notice/publication of policies and procedures.

Applies to all conduct alleged to have occurred on or after August 12, 2020

REPEALED: Board Policies and System President's Procedures (Conduct prior to 8/12/20)

- **BP 3-120 and BP 4-120**

- *Provide that individuals affiliated with the System or Colleges shall not be subjected to unlawful discrimination and/or harassment on the basis of protected class or perceived protected class.*

- **SP 3-50b and SP 4-31a**

- Civil Rights Grievance and Investigation Process

- Defines the process by which the System and Colleges shall respond to allegations of civil rights violations.

- **SP 3-120a and SP 4-120a**

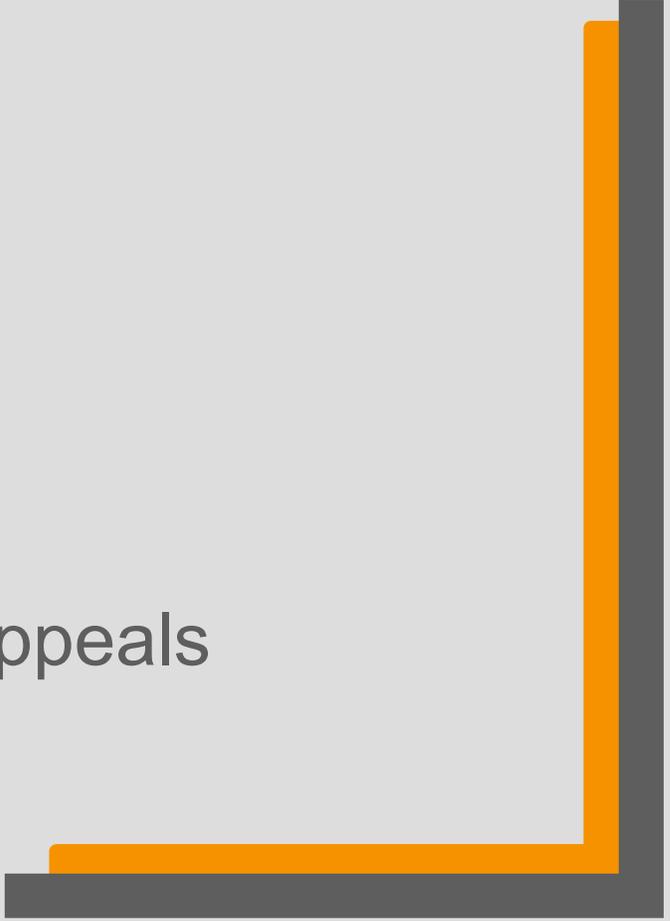
- Sexual Misconduct Procedure

- Provides definitions and expands on the process by which the System and Colleges shall respond to allegations of sexual misconduct.



Refresher

Investigations, Live Hearings, & Appeals



Preliminary Steps

- Upon receipt of a complaint, the Title IX/EO Coordinator will review the complaint to determine whether the complaint alleges sufficient information to support that a civil rights violation has occurred.

Preliminary Steps cont.

- If there is no reasonable cause found to initiate a formal investigation, the Title IX/EO Coordinator shall notify the Complainant and discuss other options for addressing the reported concerns.
- If there is reasonable cause and the Complainant wishes to proceed, the Title IX/EO Coordinator will initiate an informal resolution or a formal investigation.

Timeline

- CCCS shall make every effort to complete the resolution or investigation process within approximately 90 days from the date the complaint is filed.
- If the complaint cannot be resolved within 90 days, the Title IX/EO Coordinator may extend the timeline when necessary.

Steps for all Formal Investigations

- Title IX/EO Coordinator will assign investigators.
- Title IX/EO Coordinator will provide the Notice of Investigation to the Complainant and Respondent.
- Investigators will conduct interviews of parties and witnesses, as deemed relevant by the Investigators.
- Throughout the investigation, the Title IX/EO Coordinator will provide regular written updates on the status of the investigation the parties.
- Following the fact gathering stage, the investigator(s) shall issue a Preliminary Investigation Report to the parties for review.
 - Includes relevant facts as gathered by the investigators, but does not include findings, analysis, or conclusion.
 - Parties have 10 calendar days to review and respond with any changes, clarifications, or questions.
 - Parties may review, upon request, all evidence collected as part of the investigation, whether or not it will be relied upon in reaching a determination.

Final Investigation Report

- At the conclusion of the investigation, investigator(s) shall issue a Final Investigation Report to the Title IX/EO Coordinator. The Final Investigation Report should include any relevant information submitted by the parties in response to the Preliminary Investigation Report.

Final Investigation Report cont.

- *Report should detail the factual findings and summarize the relevant evidence.*
- *Investigators may determine that certain behavior did or did not occur, based on a preponderance of the evidence (more likely than not).*
 - For example, “The investigators find, more likely than not, that Respondent touched Complainant’s genitals. Further, investigators find that while Complainant did not tell Respondent not to touch them, Complainant did not engage in the activity and Respondent did not provide information to the investigators as to why they believed Complainant was interested in the sexual activity.”
- ***The report will not, however, refer to/apply any definitions within SP 19-60, or contain any determinations as to whether the conduct is in violation of BP/SP 19-60.***

Final Investigation Report cont.

- Upon receipt of the Final Investigation Report, the Title IX/EO Coordinator shall proceed as follows:
 - *For cases involving Sexual Harassment, the Title IX/EO Coordinator shall initiate a live hearing.*
 - *For other civil rights cases, the Title IX/EO Coordinator will obtain a written Determination Report from the investigators.*

Which cases go to Live Hearing?

- **ALL SEXUAL MISCONDUCT AND GENDER-BASED DISCRIMINATION/HARASSMENT** cases that were formally investigated.
- This is true for formal investigations involving students and employees (including student/student, employee/employee, student/employee, employee/guest, student/visitor, etc.).

Live Hearings

A Live Hearing must be scheduled no earlier than ten (10) days after issuance of the Final Investigation Report.

Live Hearings cont.

- *At the hearing, the Complainant and Respondent must be accompanied by an advisor.*
 - *The advisor is responsible for questioning the witnesses; the Complainant and Respondent are not permitted to ask questions directly.*
 - *If the party does not provide their own, the College will provide an advisor at no charge.*
- *Following the hearing, the Hearing Officer will issue a Determination Report to the Title IX/EO Coordinator.*
 - *The report will state whether or not, based on a preponderance of the evidence, the alleged behavior took place and whether that behavior constitutes a civil rights violation.*

Notice of Finding

- The Title IX/EO Coordinator will provide a Notice of Finding to the Complainant and Respondent notifying them of the findings. The parties will also receive a copy of the Final Investigation Report and Determination Report.
- The Notice of Finding will inform the parties that the Determination Report produced by the Hearing Officer will be adopted in its entirety by the College.

Appeals

- Parties have the right to appeal the findings within 10 calendar days of service of the decision.
 - *If the appeal is timely and meets the limited grounds for appeal, an Appellate Officer will be assigned.*
- Once the appeal process has been exhausted:
 - *If the Respondent is found not in violation, the complaint shall be closed with no further disciplinary action.*
 - *If the Respondent is found in violation, the findings will be provided to the Disciplinary Authority to proceed in accordance with applicable policies.*



Live Hearings

Roles & Responsibilities



Hearing Officers & Advisors

- *CCCS has a Memorandum of Understanding with the Office of Administrative Courts for Hearing Officers.*
- *The Colorado Attorney General's Office has a list of Advisors that CCCS has access to.*

Role of the Hearing Officer

- *The Hearing Officer is responsible for overseeing the hearing, making determinations as to relevance of questions posed by the advisors, asking questions directly to the parties and witnesses, and evaluating all relevant evidence to make a final determination regarding the allegations.*

Role of the Hearing Officer cont.

- *The Hearing Officer has discretion regarding the details and order that parties will be permitted to present evidence, provided that both parties are given equal opportunities to present relevant evidence and cross-examine witnesses.*
- *The Hearing Officer has the authority to remove anyone from a hearing who is not following the rules and/or to maintain order of the proceedings.*

Role of Advisors

- *At the hearing, the Complainant and Respondent must be accompanied by an advisor. Advisors are responsible for questioning/cross-examining parties and witnesses and conducting re-direct examination/questioning.*
- *Advisors are also responsible for abiding by all rules during the hearing. All party and witness questioning shall be done by the advisors (or the Hearing Officer), not the parties. Only questions deemed relevant by the Hearing Officer shall be permitted.*

Role of the Title IX/EO Coordinator

- *The Coordinator will generally serve as a Facilitator during the Live Hearing.*
- *Facilitators assist with the technical aspects of the hearing which may include, starting/stopping the official recording of the hearing, displaying exhibits, admitting witnesses into the hearing, keeping track of break/recess time, etc.*

Role of the Investigators/Witnesses

- *Witnesses will submit for cross-examination by the parties' advisors (generally after both parties have been cross-examined).*
- *Witnesses will not be permitted to attend the full hearing and will only be admitted during the period of their questioning, unless the Hearing Officer deems otherwise.*



Live Hearings

The Logistics



Purpose of the Live Hearing

The hearing is held to provide an opportunity for cross-examination of parties and witnesses related to the underlying investigation and Final Investigation Report. It is an administrative hearing, not a court of law.

Live Hearing Structure

- *Live Hearings will be held via video conference (WebEx, Microsoft Teams, Zoom, etc.).*
 - The Facilitator will record the hearing.
- *Title IX/EO Coordinators will be in touch with investigators/witnesses regarding the time/date of the hearing.*
- *During the hearing, only Advisors and the Hearing Officer may ask questions of the parties and witnesses.*
 - The Complainant and Respondent will not speak to investigators/witnesses or ask them questions directly during the hearing.
 - During the hearing, investigators may be asked to provide clarification about the investigation and their written reports. The findings may also be challenged.

Live Hearing Outline for Witnesses

- *A Live Hearing Outline for Witnesses will be provided to you by the Title IX/EO Coordinator in advance of your cross-examination.*
 - If you have questions about the outline, reach out to the Coordinator in advance.
- *The Live Hearing Outline may include the following details of the live hearing:*
 - Date and Location/virtual platform to be used
 - Participant Names & Description of Roles
 - Cross-Examination Procedures
 - Rules & Expectations of the Hearing

Cross-Examination Procedures

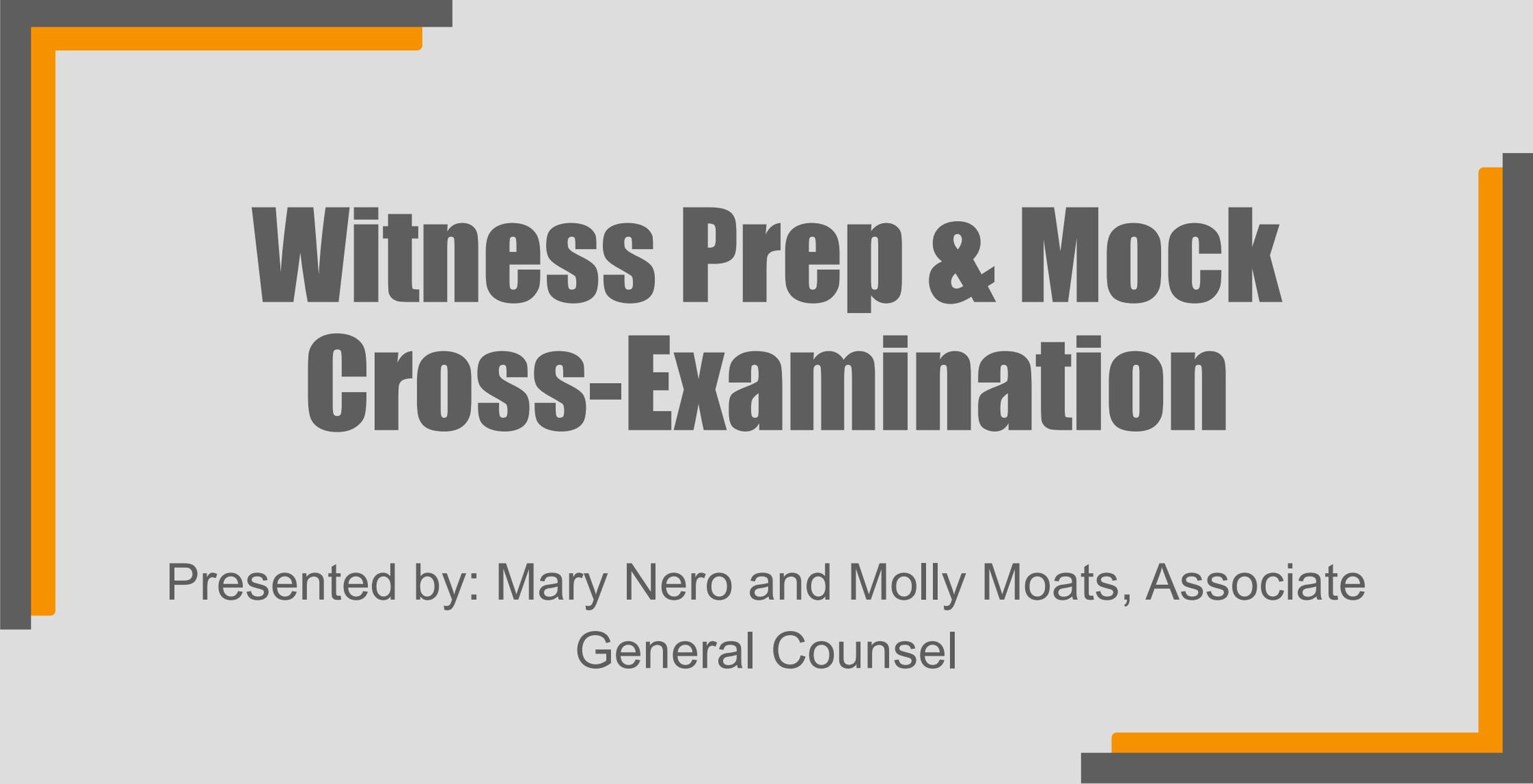
- *Only relevant questions will be allowed. After each question, the Hearing Officer will interject if a question is not relevant, provide the reason it will not be allowed, and direct the party/witness not to provide an answer.*
- *A question will be deemed relevant if it seeks evidence pertinent to proving whether facts material to the allegations under investigation are more or less likely to be true.*

Cross-Examination Procedures cont.

- *Each witness will be cross-examined, first by the advisor that is more adverse to that individual's testimony, and then questioning by the other party's advisor will be allowed.*
- For example, a witness who is a friend of the Complainant testifying to corroborate Complainant's allegations would first be cross-examined by the Respondent's advisor.

Live Hearing Tips

- *Prior to the hearing, review the following:*
 - The Final Investigation Report.
 - The Preliminary Investigation Report and any feedback provided by the parties.
 - Interview notes and written statements from parties and witnesses.
 - Any other information in the Investigation File that you believe is relevant and helpful in refreshing your memory.



Witness Prep & Mock Cross-Examination

Presented by: Mary Nero and Molly Moats, Associate
General Counsel



Questions?



Thank you for attending!

Feel free to contact me with any questions.

Tashana Taylor

Director of Civil Rights and Investigations

Tashana.Taylor@cccs.edu

(720) 858-2444

