

## **APPENDIX D**

### **Rights of the Accused and the Complainant**

- I. At the beginning of each Hearing, the Presiding Officer must advise the Accused and the Complainant(s) of the rights contained herein, in addition to those rights provided in **APPENDIX C., XIV. and XV.**
- II. Any Accused or Complainant shall have the right to petition the Dean of Students to exercise his or her discretion for a Faculty-Student Judiciary Board Hearing rather than a Student Judiciary Board Hearing or an Administrative Hearing.
- III. Any Accused or Complainant shall have the right to have a Non-participating Advisor as defined in **APPENDIX B., IV.,** and subject to the notice provisions of **APPENDIX C., XVIII.** present at the Hearing.
- IV. Prior to the Hearing the Accused and the Complainant shall be given the opportunity to inspect any affidavits or other evidence which is to be submitted against the Accused. The Accused must be provided with a written list of witnesses and copies of any statements, Complaints, affidavits or other evidence submitted by the Complainant(s), at least forty-eight (48) hours prior to the Hearing. At least forty-eight (48) hours prior to the Hearing the Complainant(s) shall be provided with a written list of witnesses and copies of any statements, affidavits or other evidence which has been submitted by the Accused.
- V. The Accused and the Complainant(s) shall have the right to call a reasonable number of relevant witnesses.
- VI. Subject to the provisions of **APPENDIX C., XXIII.** any Accused shall have the right to an open Hearing, if he or she so desires, and if the Judiciary Board or the Administrative Hearing Officer concurs.
- VII. The Board and the Administrative Hearing Officer each have the right to tape all Hearings. If any Accused or Complainant wishes to ensure that a tape will be made, he or she must inform the Dean of Students or the Head Judicial Procedures Officer at least forty-eight (48) hours prior to the Hearing. The tape recording will be kept in the Office of the Dean of Students. In cases of appeal, the Appellate Board, the appellant and/or the appellee and their respective Non-participating Advisors, if any, may, at the Office of the Dean of Students during its regular business hours, listen to the tape. The tape will not be kept for more than twelve months following the end of an appeal, at which time it shall be destroyed or erased for reuse, at the option of the College, unless retention is required by legal process or if the Hearing be the subject of a threatened or pending litigation in which the College, College Judiciary personnel, College employees or agents are named or potential parties.
- VIII. The Accused and any Complainant shall have the right to obtain a copy of the official tape.
- IX. The Accused has the right to hear all testimony against him or her and to confront and question all witnesses present at the Hearing. No decision of the Board or Administrative Hearing Officer shall be based upon witness statements without the Accused and Complainant having been given the opportunity to cross-examine the witnesses.
- X. Any Accused has the right to remain silent. If he or she chooses to remain silent, the Board or Administrative Hearing Officer will make a determination as to the truth of the allegations based on the evidence presented. Neither the Board nor the Administrative Hearing Officer shall draw any inferences from the decision of any Accused to remain silent.

- XI. At the time of the Hearing the Accused may request that the Presiding Officer waive specific Hearing Procedures, as well as any of the rights of the Accused under these Claremont McKenna College Judicial Procedures unless such waiver is prohibited under any applicable law. Such waiver shall only be accepted after the Accused indicates his, her or their understanding of the specific procedure to be waived and the consequences such waiver might have upon the presentation of an effective defense. Requests for the waiver of any rights prior to a Hearing must be made in writing.
- XII. Any Accused has the right to admit the allegations based upon a full understanding of the potential consequences under these Claremont McKenna College Judicial Procedures.
- XIII. The rights of any Complainant may be waived by that Complainant, if permitted under applicable law. Such waiver shall only be accepted after the involved Complainant(s) indicates his, her or their understanding of the specific procedure to be waived and the consequences such waiver might have upon the effective prosecution of the case, and/or upon the rights of the involved Complainant under these Claremont McKenna College Judicial Procedures. Requests for the waiver of any rights prior to a Hearing must be made in writing.
- XIV. Subject to any provision of these Judicial Procedures providing for the delay of commencement of the Hearing, a Hearing shall commence no later than three (3) months after the filing of the Complaint.