

SECTION 1 Introduction

PART 6 Title IX

Section I - Part VI

POLICY STATEMENT

Montcalm Community College is committed to maintaining an education and work environment that is free from sexual harassment. The College does not discriminate on the basis of sex in its education programs or activities. Pursuant to its obligations under Title IX of the Education Amendments Act of 1972, and its implementing regulations, the College is committed to eliminating sex-based harassment and will take appropriate action when an individual is determined responsible for violating this policy.

This policy applies to student and employee complaints alleging sex-based harassment that is a violation of Title IX and its implementing regulations. All administrators, faculty, staff, and all other College employees share responsibility for avoiding, discouraging, and reporting acts of sex-based harassment as a matter of their employment. All members of the College community are further encouraged to avoid, discourage and report violations of this policy of which they may become aware. Note that a person is entitled to make a complaint of sex-based harassment only if they themselves are alleged to have been subjected to the sex-based harassment, if they have a legal right to act on behalf of such person, or if the Title IX Coordinator initiates a complaint consistent with the requirements of 34 C.F.R. § 106.44(f)(1)(v).

The following people have a right to make a complaint of sex discrimination, including complaints of sex-based harassment, requesting that the College investigate and make a determination about alleged discrimination under Title IX:

- A “complainant,” which includes:
 - a student or employee of the College who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX; or
 - a person other than a student or employee of the College who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX at a time when that individual was participating or attempting to participate in the College's education program or activity;
- A parent, guardian, or other authorized legal representative with the legal right to act on behalf of a complainant; or
- The College's Title IX Coordinator.

With respect to complaints of sex discrimination other than sex-based harassment, in addition to the people listed above, the following persons have a right to make a complaint:

- Any student or employee the College; or
- Any person other than a student or employee who was participating or attempting to participate in the College's education program or activity at the time of the alleged sex discrimination

DEFINITIONS

Sex-based Harassment: Sex-based harassment means conduct on the basis of sex that satisfies one or more of the following:

- (1) A College employee or any other individual, conditioning the provision of an aid, benefit, or service of the College on an individual's participation in unwelcome sexual conduct (often called "*quid pro quo*" harassment);
- (2) Unwelcome conduct determined by a reasonable person to be so severe, or pervasive, and objectively offensive that it effectively denies a person equal access to the College's education program or activity (often call "hostile environment" harassment); or
- (3) "Sexual assault" as defined in the Clery Act (20 U.S.C. 1092), or "dating violence," "domestic violence," or "stalking" as defined in the Violence Against Women's Act (34 U.S.C. 12291).

A. "Sexual assault" means any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent. Sexual assault includes rape, fondling, incest, and statutory rape.

1. Rape is penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
2. Fondling is the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
3. Incest is the sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
4. Statutory Rape is the sexual intercourse with a person who is under the statutory age of consent.

B. "Domestic violence" includes felony or misdemeanor crimes of violence committed by –

- A current or former spouse or intimate partner of the victim;
- A person with whom the victim shares a child in common;
- A person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner;
- A person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime occurred; or
- Any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime occurred.

- C. "Dating violence" means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the person involved in the relationship.
- D. "Stalking" means engaging in a course of conduct directed at a specific person that would cause a reasonable person to – (1) fear for the person's safety or the safety of others; or (2) suffer substantial emotional distress.

Sex-based Discrimination: Sex discrimination includes but is not limited to sex-based harassment. Sex discrimination includes discrimination on the basis of: Sex stereotypes, sex characteristics, sexual orientation, gender identity, pregnancy or related conditions.

Complainant: Complainant means an individual who is alleged to be the victim of conduct that could constitute sex-based harassment.

Consent: Consent is a clear, freely given, verbalized "yes" to sexual activity. The absence of "no" is not consent. Silence, in and of itself, cannot be interpreted as consent. Furthermore, a verbalized "yes" which has been coerced, does not constitute a freely given "yes." Individuals who consent to sex must be able to understand what they are doing. A person may not be able to give consent if: they are under the age of 16, if they are legally mentally incapable, mentally incapacitated, or physically helpless. This may include impairment due to drug or alcohol use. Consent can be given by words or actions, as long as those words or actions create mutually understandable clear permission regarding willingness to engage in (and the conditions of) sexual activity.

- Consent to any one form of sexual activity does not automatically imply consent to any other forms of sexual activity.
- Previous relationships or prior consent does not imply consent to future sexual acts.

Respondent: Respondent means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

Formal Complaint: 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 the College investigate the allegation of sexual harassment. At the time of filing a formal complaint with the College, a complainant must be participating in or attempting to participate in the College's education program or activity. "Document filed by a complainant" means a document or electronic submission (such as by electronic mail or through an online form or click on this link: Title IX Complaint Form that the College provides for this purpose) that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party to the formal complaint and must not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.

Actual Knowledge: Actual knowledge means notice of sexual harassment or allegations of sexual harassment to the College's Title IX Coordinator, or any College official who has authority to institute corrective measures on behalf of the College. The mere ability or obligation to report sexual harassment or to inform a student about how to report sexual harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of the College. "Notice" includes, but is not limited to, a report of sexual harassment to the Title IX Coordinator. This standard is not met when the only College official with actual knowledge is the respondent.

Supportive Measures: Supportive measures mean non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the College's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the recipient's educational environment, or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions of contact between the parties, changes in work locations, classes, or housing, leaves of absence, increased security and monitoring of certain areas of the campus (including school buildings and facilities), and other similar measures (e.g., instituting changes to extracurricular activities, transportation, to allow the complainant and respondent to avoid contact; informing the complainant of other available resources, such as legal assistance and victim advocacy).

Education Program or Activity: Education program or activity includes locations, events, and circumstances over which the College exercises substantial control over both the respondent and the context in which the sexual harassment occurs.

Eligible Student: Eligible student means a student is attending, or attempting to attend, an institution of postsecondary education.

TITLE IX COORDINATOR

Montcalm Community College designates and authorizes the following individual to coordinate its efforts to comply with the College's responsibilities under Title IX and its implementing regulations:

Connie Stewart, Sr. Vice President for Administrative Services 989-328-1249. Connies@montcalm.edu 2800 College Drive, Sidney, MI 48885.

The College shall notify applicants for employment, students, and employees with the College of the following information:

Montcalm Community College does not discriminate on the basis of sex in its education program or activity and is required by Title IX and its implementing regulations not to discriminate in such a manner. This requirement not to discriminate in its education program or activity extends to admission and employment. The College's Title IX Coordinator is:

Connie Stewart, Vice President for Administrative Services 989-328-1249. Connies@montcalm.edu 2800 College Drive, Sidney, MI 48885

Any inquiries about the application of Title IX and its implementing regulations to the College may be referred to the College's Title IX Coordinator, the Assistant Secretary for the U.S. Department of Education's Office for Civil Rights, or both.

The College has adopted grievance procedures that provide for the prompt and equitable resolution of complaints made by students, employees, or other individuals participating or attempting to participate in its education program or activity or by the Title IX Coordinator, alleging any action that would be prohibited by Title IX and/or its implementing regulations. The grievance procedures are included in the Montcalm Community College Title IX Policy, which is available at: Title XI Policy. The grievance procedures and grievance process specifically address how to report or file a complaint of sex-based discrimination, how to report or file a formal complaint of sexual harassment, and how the College will respond.

The College will prominently display the Title IX Coordinator's contact information (i.e., Name and/or, Title, Phone Number, Office Address, and Email Address). This Policy is on the College's website and the College makes it available to applicants for employment, students and employees.

GRIEVANCE PROCEDURES AND PROCESS

The College is committed to promptly and equitably resolving student and employee complaints alleging any action that is prohibited by Title IX and/or its implementing regulations. The College's response to allegations of sexual harassment will treat complainants and respondents equitably, provide supportive measures to the complainant and respondent, as appropriate, and follow this Grievance Process. The Title IX Coordinator, investigator, decision-maker(s), or any person designated to facilitate an informal resolution, shall not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent that affects the outcome of the matter. The College presumes that the respondent is not responsible for the alleged sex-based discrimination until a determination is made at the conclusion of its grievance procedures. If a determination of responsibility for sexual harassment is made against the respondent, the College will provide remedies to the complainant. The remedies will be designed to restore or preserve equal access to the College's education program or activity. Potential remedies include, but are not limited to, individualized services that constitute supportive measures. Remedies may be disciplinary or punitive in nature and may burden the respondent. **Report of Sex-based Harassment**

Any person may report sex-based discrimination, including sexual harassment, whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex-based discrimination or sexual harassment. A report may be made in person, by mail, by telephone, or by electronic mail, using the Title IX Coordinator's contact information listed above, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Such a report may be made at any time (including during non-business hours), by using the telephone number or electronic mail address, or by mail to the office address listed for the Title IX Coordinator.

College employees are required, and students, parents, community members, and third parties are encouraged, to report allegations of sex-based discrimination or sexual harassment promptly to the Title IX Coordinator or any College employee. Reports can be made orally or in writing and should be as specific as possible. Reporting avenues include but are not limited to:

- Contact the Title IX Coordinator
- File an incident report on the College's website at Montcalm.edu and click on the word complaint at the bottom of the page; or
- Use the confidential anonymous tip line for any situation or conduct you believe violates an applicable law, regulation, government contract, grant requirement or College Title IX Policy. The anonymous tip line phone number is : 866-384-4277.

The person making the report shall, to the extent known, identify the alleged victim(s), perpetrator(s), and witness(es), and describe in detail what occurred, including date(s), time(s), and location(s).

A complainant may file criminal and Title IX complaints simultaneously. A complainant does not need to wait until the Title IX investigation is completed before filing a criminal complaint. Likewise, questions or complaints relating to Title IX may also be filed with the U.S. Department of Education's Office for Civil Rights. Any College employee who receives a report involving allegations of sex-based discrimination and/or sexual harassment shall notify the Title IX Coordinator as soon as practicable after receiving the report, but in no circumstances more than two (2) business days. If the reporting individual submitted a written complaint to the employee, the employee must provide the written complaint to the Title IX Coordinator.

Formal Complaint of Sexual Harassment

A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, or by filling out a complaint form on the college's website. Reports are also received through the College's incident report systems and through the Anonymous Tip Line. The Title IX Coordinator is authorized to file a formal complaint in lieu of the complainant's stated desire in the event of the College assessment of the threat of ongoing risk posed to the college.

When the College receives a formal complaint, the College will follow its Grievance Process, as set forth herein. Specifically, the College will undertake an objective evaluation of all relevant evidence – including both inculpatory and exculpatory – and provide that credibility determinations will not be based on a person's status as a complainant, respondent, or witness.

The College will take reasonable steps to protect the privacy of the parties and witnesses during its grievance procedures. These steps will not restrict the ability of the parties to obtain and present evidence, including by speaking to witnesses; consult with their family members, confidential resources, or advisors; or otherwise prepare for or participate in the grievance procedures. The parties cannot engage in retaliation, including against witnesses

Filing a Formal Complaint

When a report of sexual harassment is made, the Title IX Coordinator, or their designee, shall promptly contact the complainant (including his/her parent/guardian if the complainant is under 18 years of age or under guardianship) to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures. Any supportive measures provided to the complainant or respondent shall be maintained as confidential, to the extent that maintaining such confidentiality will not impair the ability of the College to provide the supportive measures. In the event that the complainant is unable to file a formal complaint, the Title IX Coordinator is authorized in that instance to file the formal complaint on their behalf. However, if the complainant is unwilling to be named, preferring to remain anonymous, a formal Title IX investigation may not be as effective.

When a party is both a student and an employee of the College, the Title IX Coordinator will make a fact-specific inquiry to determine whether the requirements set forth in the Grievance Process apply. In making this determination, the College will consider whether the party's primary relationship with the College is to receive an education and whether the alleged sex-based harassment occurred while the party was performing employment-related work.

Emergency Removal: The College may remove a respondent from its education program or activity on an emergency basis after conducting an individualized safety and risk analysis. The purposes of the individualized safety and risk analysis is to determine whether the respondent poses an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment that justifies removal. If the College determines the respondent poses such a threat, it will so notify the respondent and complainant, and the respondent will have an opportunity to provide a written challenge of the decision to the Dean of Student and Enrollment Services within two (2) business days following notification of the removal.

The Dean of Student and Enrollment Services or his/her designee shall determine whether emergency removal is warranted within five (5) calendar days of receiving the challenge. If the respondent is a non-student employee, the College may place the respondent on administrative leave during the pendency of the grievance process.

Informal Resolution

Under no circumstances shall a complainant be required as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, to waive his/her right to an investigation and adjudication of a formal complaint of sexual harassment. Similarly, no party shall be required to participate in an informal resolution process. However, if a formal complaint is filed alleging activity that falls under this policy, the Title IX Coordinator may offer to the parties an informal resolution process. If the parties mutually agree to participate in the

informal resolution process, the Title IX Coordinator shall designate a trained individual to facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication. The informal resolution process may be used at any time prior to the decision-maker(s) reaching a determination regarding responsibility.

If the Title IX Coordinator proposes an informal resolution process, the Title IX Coordinator shall provide to the parties a written notice disclosing:

- (1) the allegations;
- (2) the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations; and
- (3) any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

Any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint.

Before commencing the informal resolution process, the Title IX Coordinator shall obtain from the parties their voluntary, written consent to the informal resolution process. The informal resolution process is not available to resolve allegations that an employee sexually harassed a student.

Initiation of Grievance Process

The College will seek to conclude the grievance process, including resolving any appeals, within 60 days of receipt of the formal complaint. If the Title IX Coordinator offers informal resolution processes, the informal resolution processes may not be used by the complainant or respondent to unduly delay the investigation and determination of responsibility. This timeframe, however, may be impacted by the complexity and severity of the matter, and may be subject to a temporary delay of the grievance process or a limited extension for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a party, a party's adviser, or a witness; concurrent law enforcement activity; the need for language assistance or accommodation of disabilities; and school breaks. The Title IX Coordinator will provide the parties with updates on the status of the grievance process.

The respondent is presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

Upon receipt of a formal complaint, the Title IX Coordinator will provide written notice of the following to the parties who are known with sufficient time for the parties to prepare a response before any initial interview:

- (1) Notice of the College's grievance process, including any informal resolution process;
- (2) Notice of the allegations potentially constituting sexual harassment as defined in this policy, including sufficient details known at the time and with sufficient time 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.
- (3) The written notice must:

- a. inform the parties that Montcalm Community College will use preponderance of the evidence (more likely than not) as the standard of evidence for the Title IX grievance process.
- b. include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility will be made at the conclusion of the grievance process;
- c. inform the parties that the college will assign them an adviser, or they may have an adviser of their choice, who may be, but is not required to be, an attorney;
- d. inform the parties that they may inspect and review evidence; and
- e. inform the parties of any provision in the College's Code of Conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.
- f. inform the parties that Montcalm Community College Title IX investigations will be conducted free from bias and include access to the training materials used to train the Title IX internal team.
- g. inform the parties that retaliation is prohibited.
- h. inform the parties that they are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence or an accurate description of this evidence. If the College provides a description of the evidence: The parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence upon the request of any party.

The preceding notice shall be provided within five (5) business days, or as soon as possible, of the Title IX Coordinator's receipt of the formal complaint of sexual harassment.

If, in the course of an investigation, the Title IX Coordinator decides to investigate allegations about the complainant or respondent that are not included in the original notice provided to the parties, the College will provide notice of the additional allegations to the parties whose identities are known.

Dismissal of a formal complaint

The College shall investigate the allegations in a formal complaint, unless the conduct alleged in the formal complaint: (1) would not constitute sexual harassment (as defined in this policy) even if proved; (2) did not occur in the College's education program or activity (as defined in this policy); or (3) did not occur against a person in the United States. If one of the preceding circumstances exists, the Title IX Coordinator shall dismiss the formal complaint. If the Title IX Coordinator dismisses the formal complaint due to one of the preceding reasons, the College may still investigate and/or take action with respect to such alleged conduct pursuant to another provision of the College's applicable code of conduct or policies, namely student conduct for students and human resources for faculty or staff.

The Title IX Coordinator may dismiss a formal complaint or any allegations therein, if at any time during the investigation or hearing: (1) a 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 participating in the College's education program or activity, or is no longer employed by the College; (3) specific circumstances prevent the College from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein; or (4) the College is unable to identify the respondent after taking reasonable steps to do so.

If the Title IX Coordinator dismisses a formal complaint or allegations therein, the Title IX Coordinator must promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.

Consolidation of formal complaints

The Title IX Coordinator may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, when 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 this policy to the singular “party,” “complainant,” or “respondent” include the plural, as applicable.

Investigation of a Formal Complaint of Sexual Harassment

In conducting the investigation of a formal complaint and throughout the grievance process, the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility is on the College, not the parties.

In making the determination of responsibility, the decision-maker(s) is (are) directed to use the preponderance of evidence standard.

Pursuant to law, the College is not permitted to access, consider, disclose, or otherwise use a party’s records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional’s or paraprofessional’s capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the party provides the College with voluntary, written consent to do so.

Similarly, the investigator(s) and decision-maker(s) may not require, allow, rely upon or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a privilege recognized by Federal or State law, or evidence provided to a confidential employee, unless the person holding such privilege has waived the privilege.

As part of the investigation, the parties have the right to:

- (1) present witnesses, including fact witnesses, and other inculpatory and exculpatory evidence; and
- (2) have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the adviser of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of an adviser for either the complainant or respondent in any meeting or grievance proceeding.

The College has discretion to determine whether parties may present expert witnesses. The determination must apply equally to both parties.

The adviser role: In a hearing, the role of an adviser is to ask any questions of the opposing side (complainant or respondent) on behalf of their assigned party. In any other meeting leading up to the hearing, the adviser is there to provide process or other advice to the party they are representing, but are not permitted to participate in the meetings directly.

Neither party shall be restricted in their ability to discuss the allegations under investigation or to gather and present relevant evidence.

The College 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. The College must provide a minimum of ten (10) calendar days’ notice with respect to hearings and three (3) days’ notice with respect to investigative interviews and other meetings.

Both parties shall have an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the College does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.

Prior to completion of the investigative report, the Title IX Coordinator or their designee must send to each party and the party's adviser, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least ten (10) days to submit a written response, which the investigator will consider prior to completion of the investigative report. The College will make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

At the conclusion of the investigation, the investigator shall create an investigative report that fairly summarizes relevant evidence and send the report to each party and the party's adviser, if any, for their review and written response. The investigator must send the investigative report in electronic format or a hard copy, at least ten (10) days prior to the hearing.

Determination of Responsibility

The Title IX Coordinator may appoint a decision-maker(s) to issue a determination of responsibility. The decision-maker(s) may be the same person(s) as the Title IX Coordinator(s) or the investigator(s).

After the investigator sends the investigative report to the parties and the decision-maker(s), and prior to the decision-maker(s) issuing a determination of responsibility, the decision-maker(s) may conduct a hearing.

Hearing Process:

Civility is expected. Any participant, including an adviser, who is behaving in an abusive, threatening or otherwise disruptive manner, can be removed from the hearing. If an adviser refused to cooperate with the college expectations of decorum, the college may require the party to use a different adviser.

The decision-maker(s) will control all aspects of the hearing in addition to and consistent with the guidance included in this section of the policy.

An opportunity to provide a brief opening and closing statements by the advisers will be offered to each party.

Generally, and at the discretion of the decision maker(s), the complainant will present their evidence and witnesses first. The respondent will then provide their evidence and witnesses. The complainant will then have an opportunity to present any rebuttal evidence or witnesses.

The decision maker(s) shall provide a process that enables the decisionmaker to question parties and witnesses to adequately assess a party's or witness's credibility to the extent credibility is in dispute and relevant in reevaluating one or more allegations of sex-based discrimination. Further, the decision maker(s) will permit each party's adviser to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross examination at the live hearing must be conducted directly, orally, and in real time by the party's adviser of choice and never by a party personally; notwithstanding anything to the contrary in this policy, the decision-maker(s) shall not restrict the extent to which advisers may participate in the hearing.

At the request of either party, the decision-maker(s) shall provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party or the witness answering questions.

Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

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

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not permissible, regardless of whether they are relevant, unless such 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 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.

If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

Live hearings pursuant to this section may be conducted with all parties physically present in the same geographic location or, at the Title IX Coordinator's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.

The College will create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review.

Determination regarding responsibility: The decision-maker(s) will issue a written determination regarding responsibility. To reach this determination, the decision-maker(s) must apply the preponderance of the evidence standard. The written determination will include the following content:

- (1) Identification of the allegations potentially constituting sexual harassment pursuant to this policy;
- (2) A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- (3) Findings of fact supporting the determination;
- (4) Conclusions regarding the application of the College's code of conduct to the facts;
- (5) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the College imposes on the respondent as determined in the process below, and whether remedies designed to restore or preserve equal access to the College's education program or activity will be provided by the College to the complainant; and
- (6) The College's procedures and permissible bases for the complainant and respondent to appeal. The decision-maker(s) will provide the written determination to the Title IX Coordinator who will then provide the written determination to the parties simultaneously.

Sanctions/Remedies

If the decision-maker(s) determines the respondent is responsible for violating this policy, the Title IX Coordinator, after consultation with the Dean of Students and Enrollment Services, and with human resources for a faculty or staff respondent, shall issue sanctions, including remedies to end the sex-based discrimination/sexual harassment, eliminate the hostile environment, prevent its recurrence, and remedy its effects. In addition to imposing disciplinary sanctions/consequences on the respondent, the Title IX Coordinator may also order further supportive measures along with following individual and global remedies, on a case-by-case basis:

1. Provide medical, counseling, and academic support services to the complainant and/or respondent;
2. Re-arranging schedules at the complainant's request;
3. Afford the complainant extra time to complete or retake classes without academic penalty;

4. Review any disciplinary proceedings against the complainant;
5. Train or re-train employees;
6. Develop materials on sexual harassment;
7. Conduct sexual harassment prevention programs; and/or
8. Conduct climate checks.

Disciplinary sanctions/consequences imposed on a student may include suspension, expulsion, and any other sanction authorized by the student code of conduct.

Disciplinary sanctions/consequences imposed on an employee may include written reprimands, unpaid suspension, termination, and any other sanction authorized by any applicable codes of conduct. Discipline of employees must be implemented in accordance with state law and College policy.

The determination regarding responsibility becomes final either on the date that the Title IX Coordinator provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

The Title IX Coordinator is responsible for effective implementation of any remedies.

Appeal

Both parties have the right to file an appeal from a determination regarding responsibility, and from the College/Title IX Coordinator's dismissal of a formal complaint or any allegations therein, on the following bases:

- (1) Procedural irregularity that affected the outcome of the matter;
- (2) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- (3) The Title IX Coordinator, investigator(s), or decision-maker(s) 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 matter.

Any party wishing to appeal the decision-maker(s)'s determination of responsibility, or the Title IX Coordinator's dismissal of a formal complaint or any allegations therein, must submit a written appeal to the Title IX Coordinator within five (5) calendar days after receipt of the decision-maker(s)'s determination of responsibility or the Title IX Coordinator's dismissal of a formal complaint or any allegations therein.

As to all appeals, the Title IX Coordinator will notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties. The decision-maker(s) for the appeal shall not be the same person(s) as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator.

The decision-maker(s) for the appeal shall not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent, and shall receive the training consistent with the Title IX regulations

Both parties shall have a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome. The parties' written statements in support of, or challenging, the determination of responsibility must be submitted within five (5) calendar days after the Title IX Coordinator provides notice to the non-appealing party of the appeal.

The decision-maker(s) for the appeal shall issue a written decision describing the result of the appeal and the rationale for the result. The written decision will be provided to the Title IX Coordinator who will provide it simultaneously to both parties. The written decision will be issued within ten (10) calendar workdays of when the parties' written statements were submitted. This appeal process applies solely to a formal Title IX investigation and any other similar processes do not apply.

Retaliation

Neither the College nor any other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, its implementing regulations, or this policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex-based discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex-based discrimination, or a report or formal complaint of sex-based harassment, for the purpose of interfering with any right or privilege secured by Title IX, its implementing regulations, or this policy, constitutes retaliation.

The College will keep confidential from third parties who are not involved in the process the identity of any individual who has made a report or complaint of sex-based discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex-based discrimination, any respondent, and any witness, except as may be permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

Complaints alleging retaliation may be filed according to the grievance procedures set forth above. The exercise of rights protected under the First Amendment of the U.S. Constitution does not constitute retaliation prohibited under this policy.

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this policy shall not constitute retaliation, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

Training

The College's Title IX Coordinator, along with any investigator(s), decision-maker(s), or person(s) designated to facilitate an informal resolution process, must receive training on the definition of sexual harassment (as that term is used in this policy), the scope of the College's education program or activity, how to conduct an investigation and grievance process including hearings, appeals and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interests, and bias. The College will make its training materials publicly available upon request.

Recordkeeping

The College shall create and maintain for a period of seven (7) years, records of any actions, including any supportive measures taken in response to a report or formal complaint of sexual harassment. In each instance, the College shall document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the College's education program or activity. If the College does not provide a complainant with supportive measures, then the College will document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the College in the future from providing additional explanations or detailing additional measures taken.

The College shall maintain for a period of seven (7) years the following records:

(1) Each Title IX investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript that is made of any live hearing, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the College education program or activity;

(2) Any appeal and the result therefrom;

(3) Any informal resolution and the result therefrom; and

(4) All materials used to train Title IX Coordinators, investigators, decision makers, and any person who facilitates an informal resolution process.

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