

TITLE IX - POLICY FOR SEXUAL AND GENDER HARASSMENT, SEXUAL MISCONDUCT, SEXUAL VIOLENCE			
Procedure #	Applicability	Responsible Executive	Applicable Laws/Statutes
	College Wide	President of the College	20 U.S.C. §1681-§1688

1. Purpose

To provide a process and procedure for addressing complaints alleging all forms of sex discrimination, including sexual harassment, sexual assault and sexual violence against employees, students, and third parties. Mercer County Community College (the “College”) does not tolerate such conduct, as it is harmful to the safety and well-being of our educational and working environments of students, faculty, and staff.

a. Anti-Discrimination

Mercer County Community College does not discriminate on the basis of race, creed, color, national origin, ancestry, age, gender, gender identity, affectional or sexual orientation, marital status, familial status, liability for service in the Armed Forces of the United States, nationality, political views, religion, pregnancy or related conditions disability unrelated to job or program requirements or any other characteristic protected by law.

b. Scope of Policy

This policy applies to all members of the College community, including students, faculty, and staff. It also applies to contracted workers and other third parties within the College’s purview. This policy applies to all sexual misconduct, sexual violence, harassment and discrimination on the basis of sex, sexual orientation, gender identity, and sex characteristics.

- i. Which occurs on College premises, in any College facility, or on College property; or
- ii. At College sponsored, recognized, or approved program or activity, regardless of location
- iii. That impedes equal access to any College education program or activity that creates a hostile environment which impacts the education or employment of a member of the College community regardless of where the conduct occurred; or
- iv. That otherwise threatens the health and/or safety of a member of the College Community

2. Title IX Coordinator

The College’s Title IX Coordinator will oversee the College’s review, investigation, and resolution of those reports to ensure the College’s compliance with Title IX, and related laws and guidance, and the effective implementation of this policy. The Title IX Coordinator will have adequate training on what constitutes sexual harassment, including Sexual Violence.

The Title IX Coordinator and/or EEO Officer will be:

- Responsible for all oversight of investigation and resolution of all alleged misconduct of Title IX violations within this policy, which involve students, staff, and faculty.
- Maintain current knowledge of Title IX, VAWA, and prohibited conduct as defined by this policy
- Oversee regular, on-going training for campus entities and its members.
- Responsible for monitoring, reporting, and reviewing all compliance with procedural requirements, record-keeping, and time frames outlined in this policy

Title IX Coordinator Information

1200 Old Trenton Road –West Windsor, NJ 08550

Campus Phone: (609) 570-3407

Email: titleix@mccc.edu

Anyone who believes they were retaliated against for filing a complaint under this policy, or for providing witness, statements or participating in any other role regarding a Title IX matter should report it to the Title IX Coordinator.

3. Terminology

Advisor: an individual chosen by the respondent, complainant, or reporter to accompany that individual during investigations and/or assist with any investigation preparations. The Title IX Coordinator may also assign advisors to the respondent or complainant.

College: Mercer County Community College

Complainant: (1) A student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX or; (2) A person other than a student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX and who was participating or attempting to participate in the recipient's education program or activity at the time of the alleged sex discrimination.

Confidential employee: An employee of the College whose communications are privileged or confidential under Federal or State law. The employee's confidential status is only with respect to information received while the employee is functioning within the scope of their duties where confidentiality applies. (2) An employee of the College whom the recipient has designated as confidential for the purpose of providing services to persons related to sex discrimination. If the employee also has a duty not associated with providing those services, the employee's confidential status is only with respect to information received about sex discrimination in connection with providing those services.

Consent: A voluntary, informed, un-coerced agreement with words or actions freely given, which could be reasonably interpreted as a willingness to participate in mutually agreed-upon sexual acts. The subsequent act of consensual sexual activity is when each partner affirmatively and willingly

agrees to participate.

Education Program or activity: any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient that receives Federal financial assistance.

Formal complaint: a document filed by a complainant whether electronically, in-person, or by using contact information of the Title IX office found in this policy that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the individual filing the formal complaint alleging an act of a prohibited behavior under this policy against a respondent and requesting that the College investigate the allegation of Title IX allegation. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the College.

Intimate Body Parts: includes the following: sexual organs, genital areas, anal area, inner thigh, groin, buttock, or breast of a person.

Notice of Investigation and Allegation (NOIA): Official notice from the Title IX Coordinator of an alleged violation of this policy. It includes the details of alleged violation of this policy, presumption of no responsibility for the respondent and information about advisors.

Party or Parties: a complainant or respondent.

Preponderance of Evidence: the evidentiary standard in which the party bearing the burden of proof must present evidence which is more credible and convincing than that presented by the other party or which shows that the fact to be proven is "more likely than not".

Protected Category:

Report: refers to information brought to the attention of a campus employee alleging conduct prohibited under this policy as a request for the College to investigate and make a determination about alleged discrimination under the Title IX policy or this part. A report is not considered to be a formal complaint. Therefore, a report may be made then a subsequent formal complaint.

Respondent: Respondent means a person who is alleged to have violated the recipient's prohibition on sex discrimination.

Reasonable person: Person under similar circumstances and with similar identities to the victim.

Retaliation: Intimidation, threats, coercion, or discrimination against any person by the recipient, a student, an employee or other person authorized by the recipient to provide aid, benefit, or service under the College's education program or activity, for the purpose of interfering with any right or privilege secured by Title IX or this part, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an

investigation, proceeding, or hearing under this part, including in an informal resolution process under § 106.44(k), in grievance procedures under § 106.45, and if applicable § 106.46, and in any other actions taken by a recipient under § 106.44(f)(1).

Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

4. Prohibited Behavior

- *Quid Pro Quo Sexual Harassment*: An employee of the College conditioning the provision of an aid, benefit, or service of the College on an individual's participation in unwelcome sexual conduct;
- *Sexual Assault*: 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 can occur between individuals of the same or different sexes and/or genders. This includes the following:
 - *Rape*: The carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity;
 - *Sodomy*: Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity;
 - *Sexual Assault with an Object*: To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity;
 - *Fondling*: The touching of the intimate 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 their age or because of their temporary or permanent mental or physical incapacity;
 - *Incest*: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law; or
 - *Statutory Rape*: Sexual intercourse with a person who is under the statutory age of consent.
- *Sexual Harassment*: Unwelcome sexual conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies an individual equal access to the College's education program or activity.

- *Bullying and Intimidation*: Engaging in behaviors, including gestures, written, verbal, electronic communication (i.e. e-mails, text messages, web-sites/applications or social media) or physical action that is so severe or pervasive and objectively offensive that it substantially disrupts or interferes with the operation of student's or employees participation in Education Program or Activity by creating a hostile environment. Intimidations or threats against a person's safety, rights of personal privacy, property, academic or relational pursuits, are contained within this prohibition. Specifically, intimidation knowingly creates a hostile environment in which a reasonable person should know the effect to bring emotional or physical harm through interference with a student's education, a community member's employment or participation in Education Program or Activity.
- *Domestic Violence*: A felony or misdemeanor crime of violence committed: (a) by a current or former spouse or intimate partner of the victim; (b) by an individual with whom the victim shares a child in common; (c) by an individual who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner; (d) by an individual similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the felony or misdemeanor crime of violence occurred; (e) by any other individual against an adult or youth victim who is protected from that individual's acts under the domestic or family violence laws of the jurisdiction in which the felony or misdemeanor crime of violence occurred.
- *Dating Violence*: Violence committed by an individual 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 the reporting individual's statement and with consideration of the length and type of relationship, as well as the frequency of interaction between the individuals involved in the relationship. This includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.
- *Intimate partner*: an individual with whom one has or had a short- or long-term relationship that provides romantic and/or physical intimacy or emotional dependence. Intimate relationships can occur between individuals of the same gender or different genders and may include (but are not limited to) marriages, civil unions, dating relationships, "hook-up" relationships, relationships in which partners are characterized as "girlfriends" or "boyfriends," and relationships between individuals with a child in common.
- *Stalking*: Engaging in a course of conduct directed at a specific individual that would cause a reasonable person to: (a) fear for the individual's safety or the safety of others; or (b) suffer substantial emotional distress. For the purposes of this definition: Course of conduct means two or more acts, including acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about an individual, or interferes with an individual's property.
- *Sexual Exploitation*: an individual taking non-consensual or abusive sexual advantage of another for their own benefit or for the benefit of anyone other than the person being exploited and conduct that does not otherwise constitute Sexual Harassment under this policy. This may consist of:

- Invasion of sexual privacy
 - Taking pictures, video, or audio recording of another in a sexual act or sexually related
 - Creating, possessing or disseminating child sexual abuse images or recordings
 - Engaging in efforts to have others engage in retaliatory behaviors on one's behalf
 - Knowingly making an unwelcome disclosure of (or threatening to disclose) an individual's sexual orientation, gender identity, or gender expression
 - Prostituting another person
 - Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity
 - Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually transmitted disease (STD) or infection (STI), without informing the other person of the virus, disease, or infection
- **Retaliation.** Any attempt by a recipient, or third party to take a form of retaliatory action against any member of the College community who in good faith: (1) files a report, complaint or grievance under this policy (or with an external entity); (2) opposes in a reasonable manner an action or policy believed to constitute a violation of this policy; or (3) participates or refuses to participate in the College's investigations, compliance reviews, hearing, discipline proceedings, or informal resolution processes under this policy.¹
 - Retaliatory actions may include (but are not limited to):
 - Adverse employment action
 - Adverse action relating to the participation in educational or working activity/ program
 - Unreasonable interruption or interference with academic or professional career of another individual
 - Engaging in prohibited behaviors such as stalking, harassment, or assault;
 - Engaging in efforts to have others engage in retaliatory behaviors on one's behalf
 - *Witness* refers to any individual who shares information relating to an allegation of prohibited conduct under this policy.

5. Confidentiality, Privacy, and Related Responsibilities

A. Confidentiality and Privacy

The College is committed to protecting the privacy of all individuals involved in the reporting of alleged violations of the Title IX Policy. All employees directly involved with Title IX are trained in safeguarding private information. The College will endeavor to maintain the privacy of all individuals involved in

¹ Nothing in this definition or this part prevents a College from requiring an employee or other person authorized by the College to provide aid, benefit, or service under the College's education program or activity to participate as a witness in, or otherwise assist with, an investigation, proceeding, or hearing under this part.

reporting, hearing, and outcomes. In some circumstances, the reporting responsibilities of College employees or on behalf of the College may conflict with the preferences of the complainant and/or respondent with regard to confidentiality and privacy. All individuals should familiarize themselves with their options and corresponding responsibilities and make use of confidential resources when and where applicable to determine their preferred course of action. Privacy and confidentiality maintain two distinct meanings within this process:

Privacy: Information related to a report or formal complaint will only be shared with limited and specific parties with relevancy to the report who “need to know” in order to assist in the active review, investigation, or resolution of a filed report. These individuals will use discretion to uphold privacy of all individuals involved in the process.

Confidentiality: Information shared by an individual designated as a confidential resource is prohibited from being revealed to any other individual without the express, written, permission of the individual. These resources are bound to confidentiality unless there is legitimate, imminent threat or harm to self or others, emergent hospitalization, suspicion of minor abuse or by court order.

While complainants, respondents, and witnesses involved in the grievance process under this policy are strongly encouraged to exercise discretion in sharing information to safeguard the integrity of the process and to avoid the appearance of retaliation, complainants and respondents are not restricted from discussing the allegations under investigation. Medical, psychological, and similar treatment records are privileged and confidential documents that cannot be accessed or used for a grievance process under this policy without the relevant party’s voluntary, written consent.

The Title IX Coordinator is responsible for assessing whether requests by reporting parties not to disclose their identity to anyone else, including but not limited to the alleged respondent will be granted. The College will endeavor to honor privacy, and its commitment to a safe and non-discriminatory environment for all community members.

B. Supportive/Interim Measures

Upon receipt of a complaint or report of a violation of this policy, the College will provide reasonable and appropriate interim measures designed to preserve the complainant’s educational experience, the safety of all parties and the broader College community, maintain the integrity of the investigative and/or resolution process, and deter retaliation. In order to comply with its obligations under Title IX, the College may be required to provide interim measures regardless of whether the complainant requests them or seeks formal disciplinary action. The College shall promptly inform complainants of the available interim measures.

Supportive/Interim measures may include:

For Students:

- Arranging a meeting with the Title IX Office
- Academic accommodations include:
 - Access to counseling services and assistance in arranging an initial appointment;
 - Rescheduling of exams and assignments;
 - Change in class schedule, incomplete grade in a particular course, the ability to transfer course sections or withdraw from a course;
- Other Accommodations
 - Transportation or parking accommodations
- Any other Measures that may be arranged by the College (where applicable) to ensure the safety and well-being of a student who may have been affected by Prohibited Conduct

For Employees

- Employment accommodations include:
 - Temporary assignment, when appropriate, to other work duties or responsibilities, work locations or alternative supervision/management
 - Meeting with the Title IX, EEO, or Human Resources to report Prohibited conduct
 - Arrange access to counseling services and assistance in setting up initial appointments
 - Any other Measures that may be arranged by the College (where applicable) to ensure the safety and well-being of an Employee who may have been affected by Prohibited Conduct

Any interim measures will not disproportionately impact the complainant. Requests for interim measures may be made by or on behalf of the complainant to any College official, including the Title IX Coordinator. The Title IX Coordinator is responsible for ensuring the implementation of interim measures and coordinating the College's response with the appropriate offices on campus.

All individuals are encouraged to report concerns about the failure of another to abide by any restrictions imposed by an interim measure. The College will take immediate action to enforce a previously implemented measure. Disciplinary penalties can be imposed for failing to abide by a college-imposed measure.

Advisors

Title IX Advisor accompanies a party to a Title IX case to meetings related to the resolution process, advises the party on that process, and conducts cross-examination for the party at the hearing, if one is held. Both complainant and respondent have the right to an Advisor of their choosing who may be a support person of their choosing (such as a friend, parent, mentor, attorney, etc.). An institutional advisor may also be selected as long as the Title IX Advisor is eligible and has no institutionally conflicting roles (such as being a Title IX Coordinator, a supervisor who would implement sanctions in the event of a finding of responsibility, or a witness in the process). If an advisor is not selected at the time of the process, one will be assigned by the Title IX Coordinator.

6. Options for Complainants, Respondents, and other Reporting Parties

I. Anonymous Reporting

If a complainant self-identifies but asks to remain anonymous during the investigation, the Title IX Coordinator will review the articulated concerns of any/all reporting parties. The Title IX Coordinator will also evaluate the best interests of the College community, fair treatment of all individuals involved, including the reporting party's right to have specific notice of the allegations if the College were to take action that affects the respondent and the College's obligations under Title IX.

Anonymous complaints may be filed online via the following URL link:

http://www.mccc.edu/communication_form.shtml).

Impartiality of Process and Decision Makers

The College is committed to handling all complaints as a neutral party and as such, it will endeavor to ensure that there be no perceived or actual conflicts of interest between the parties and the decision makers assigned to the case. If either party feels that the decision maker assigned to their case will not be impartial or has a conflict of interest, they may file an objection of the assignment to the Title IX Coordinator immediately upon discovery of facts leading to this conclusion.

The Decision Maker must objectively evaluate each party's relevant and, not otherwise impermissible, evidence. The Decision maker is enabled to assess a party's or witness's credibility when credibility is in dispute and relevant.

Informal Process

The parties may seek an informal resolution with the assistance of an advisor assigned by the Title IX Coordinator or by an outside neutral party. The neutral party will be selected from a pool of trained individuals that may be selected to sit on disciplinary hearing panels utilized under procedures for formal complaints.

As soon as practical, the Title IX Coordinator will designate a neutral party to explore the potential for informal resolution between the parties. In order to handle complaints informally, both the complainant** and the respondent must agree to this process. If neither party can reach a resolution, the neutral party will send the case back to the Title IX Coordinator for formal processing.

If the informal resolution is successful, the neutral party will communicate the outcome to the Title IX Coordinator. The Title IX Coordinator will document the incident and resolution of the matter. Appendix C outlines acceptable forms of informal resolutions.

The informal/mediation process will not be available to the parties in complaints involving sexual assault.

****It is important to note that the complainant is not required to resolve or attempt to resolve their complaint(s) directly or informally with respondent/accused parties.**

Investigations and Disciplinary Procedures in General for This Policy

The College is committed to providing a prompt and impartial investigation of all alleged violations of this policy. During the disciplinary process, both parties (complainant and respondent) have equivalent rights, including the opportunity to present evidence, to be accompanied by an adviser of their choice, to identify individuals who may possess relevant information (witnesses) and request that such individuals be interviewed, and to appeal. The College will inform all parties at regular intervals regarding the status of the complaint. The periodic updates may vary depending on the seriousness of the allegations. The College will concurrently provide both parties with written notification of the outcome of the process and any appeal.

Responsibility to Investigate

To protect the safety of the campus community, the Title IX Coordinator may investigate allegations of violations of this policy even absent the filing of a formal complaint or report, or if a complaint or report has been withdrawn. The Title IX Coordinator may need to proceed with an investigation even if a complainant specifically requests that the matter not be pursued. In such a circumstance, the Title IX Coordinator will consider the complainant's articulated concerns, the best interests of the College community, fair treatment of all individuals involved, and the College's obligations under Title IX. This policy differs from New Jersey criminal law.

Proceedings under this policy may be carried out prior to, simultaneously with, or following civil or criminal proceedings off campus. Neither a decision by law enforcement regarding prosecution nor the outcome of any criminal proceeding will be considered determinative of whether a violation of this policy has occurred.

Initial Assessment of Complaints

The initiation of the investigative process occurs when the Title IX Coordinator receives a complaint or report of a violation of this policy. The Title IX Coordinator will conduct an initial assessment. Following the initial assessment, the Title IX Coordinator may take any of the following actions:

- If the Title IX Coordinator determines that the complaint, even if substantiated, would not rise to the level of a policy violation, or, after consultation with the complainant about the complainant's preferences regarding participation, the Title IX Coordinator determines that there will be insufficient information to investigate the matter; the Title IX Coordinator may dismiss the complaint.
- If the Title IX Coordinator determines that the complaint is outside the scope of this policy, the Title IX Coordinator may refer the complaint to another office for review (i.e. Dean of Students, Law Enforcement, etc.).
- If the Title IX Coordinator determines that the complaint or report would, if substantiated, constitute a violation of this policy, the Title IX Coordinator will determine appropriate interim measures and initiate an investigation.

Timeliness of Report

Complainants and other reporting individuals are encouraged to report any violation of this policy as soon as possible in order to maximize the College's ability to respond promptly and effectively. Complaints and reports can be made at any time without regard to how much time has elapsed since the incident(s) in question.

If the respondent is no longer a student or employee at the time of the complaint or report, the College may not be able to take disciplinary action against the respondent. However, the College will still seek to meet its Title IX obligations by providing support for the complainant and taking steps to end the prohibited behavior, prevent its recurrence, and address its effects.

Promptness

Once the Title IX Coordinator has received notice or a Formal Complaint, all allegations are acted upon promptly. Complaints may take between 60-90 business days to resolve. There are exceptions and extenuating circumstances that can cause a resolution to extend beyond the proposed timeline. The College will seek to complete any appeal within 20 calendar days after receipt of the appeal.

There may be circumstances that require the extension of timeframes for good cause, including extension beyond 60 calendar days. Extension of timeframes are given to ensure the integrity and completeness of the investigation, comply with a request by external law enforcement, accommodate the availability of witnesses, or accommodate delays by the parties; or for other legitimate reasons, including the complexity of the investigation and the severity and extent of the alleged misconduct. The College will notify the parties in writing of any extension of the timeframes for good cause, and the reason for the extension. The college will avoid all undue delays within its control.

Although cooperation with law enforcement may require the College to suspend the fact-finding aspect of a Title IX investigation, the College will promptly resume its Title IX investigation upon receipt of notification by the law enforcement agency that the agency has completed the evidence-gathering process. The College will not wait for the conclusion of a criminal proceeding to begin its own investigation and, if needed, will take immediate steps to provide Supportive/Interim Measures for the complainant.

Investigations will proceed according to the aforementioned timeframes during the summer and at other times when the college is not in session. The Title IX Coordinator will work with the parties to balance the need for promptness and the preference for in-person meetings regarding the investigation.

Timeframes for all phases of the disciplinary process, including the investigation, any related disciplinary proceedings, and any related appeal, apply equally to both complainant and respondent.

Cooperation with Investigation and Disciplinary Procedures

The College expects all members of the College community to cooperate fully with the investigation and disciplinary procedures (OMB 930 7b). The College recognizes that an individual may be reluctant to participate in the process. Nevertheless, any student or member of the faculty or staff who refuses to

cooperate in an investigation may be subject to discipline if the refusal to cooperate includes obstructing the process or failing to acknowledge requests from College officials for information and delaying or failing to make oneself available for meetings with College officials.

It there may be circumstances in which a complainant wishes to limit their participation. The complainant retains this right and will not be subject to discipline although the College may be obligated to conduct an investigation.

If a respondent chooses not to answer any or all questions in an investigation for any reason, the College process will continue, findings will be reached with respect to the alleged conduct, and the College will issue any penalties, as appropriate. The College will not draw any adverse inference from a respondent's silence.

Sexual History

The sexual history of the complainant and/or the respondent will generally not be used in determining whether a violation of this policy has occurred. However, in certain circumstances, the sexual history between parties may have limited relevance. For example, if consent is at issue, the sexual history between the parties may be relevant to determining whether consent was sought and given during the incident in question, although even in the context of a relationship, consent to one sexual act does not constitute consent to another sexual act, and consent on one occasion does not constitute consent on a subsequent occasion. In addition, under very limited circumstances, sexual history may be relevant to explain injury, to provide proof of a pattern, or for another specific question raised by an allegation.

Consolidation of Investigation

The Title IX Coordinator has the discretion to consolidate multiple complaints or reports into a single investigation if evidence relevant to one incident might be relevant to the others.

Violations of College Policy Unrelated to Sexual Misconduct

In the event where an initial assessment or investigation under this policy identifies additional related possible violations of College policy (other than violations of the Sex Discrimination and Sexual Misconduct policy) by the same respondent(s) that would normally be handled by another disciplinary authority, the Title IX Coordinator, with the approval of that disciplinary authority, may direct an investigator and corresponding panel to investigate and adjudicate such other possible violations. In such a situation, the Title IX Coordinator and other disciplinary authorities will determine the procedures to be followed on consideration of the nature of the alleged violation(s) and other relevant factors. The standard of evidence applied to each violation will not be altered; the preponderance of the evidence standard will be applied as appropriate, and the clear and persuasive evidence standard will be applied as appropriate.

Circumstances Relating to Misconduct Affecting Health or Safety

In connection with this policy, in circumstances seriously affecting the health or well-being of any person, where physical safety is seriously threatened, or where the ability of the College to carry out its essential

operations is seriously threatened or impaired, the president or an authorized representative may summarily suspend, dismiss, or bar any person from the College.

In all such cases, the actions taken will be reviewed promptly, typically within one week, by the appropriate College authority.

Making a Criminal Complaint to Law Enforcement

At the complainant's request, the College will assist the complainant in contacting local law enforcement and will cooperate with law enforcement agencies if a complainant decides to pursue the criminal process. The Office of College Safety and local police department's information is located in Appendix B.

Investigation, Disciplinary, and Appeal Procedures for Cases When the Respondent Is a Student

Investigation and Adjudication

Student Complainant, Student Respondent

When the Title IX Coordinator receives a complaint or report alleging that a student violated this policy, the Title IX Coordinator will appoint an investigator. The investigator² will send a Notice of Investigation and Allegation (NOIA) to both parties, which outlines the allegation, supportive measures, and policy. The investigator will conduct an inquiry and determine, by a preponderance of the evidence, whether this policy was violated. *The 2024 Title IX Federal Regulations permit a single-investigator model allowing one individual to investigate and adjudicate a case. In cases where necessary the Title IX Coordinator may serve as that single-investigator.*

The investigator and decision maker will have training in investigating and evaluating conduct prohibited under the policy and be trained in investigation. The investigator will also be impartial and unbiased.

The investigator will interview the parties to the complaint separately. Each party may select an advisor of their choice who may accompany them to any meeting or related proceeding, but the adviser may not actively participate in the interview process. The investigator will interview witnesses as necessary. Witnesses may not bring advisors. The investigator must decide whether the interviews will be recorded or not recorded and decide whether the notes will be transcribed or summarized. At the conclusion of each interview, the investigator will review the notes with the interviewee.

The investigator will prepare a case file of all interview summaries, witness statements, and other documents. The file, redacted of personally identifiable information as necessary, will be shared with the complainant and the respondent. The investigator will describe in writing for the parties the charges that will be investigated.

² *The 2024 Title IX Federal Regulations permit a single-investigator model allowing one individual to investigate and adjudicate a case. Where necessary the Title IX Coordinator may serve as that single-investigator.*

After reviewing the file, each party will have an opportunity:

- (1) to meet again with the investigator,
- (2) to respond in writing to the investigator,
- (3) to request the collection of other information by the investigator, and
- (4) to identify individuals who may possess relevant information (and request that such individuals be interviewed).

If any additional information is gathered, it will be shared with both parties, and each will have the opportunity for further response. The investigator will designate reasonably prompt time frames to ensure a timely completion of the process but also an adequate opportunity for both sides to respond thoroughly to the information gathered in the investigation.

At the conclusion of the investigation, the investigator will prepare a report, which will include findings of fact, findings of responsibility, and the investigator's rationale. The investigator will determine whether the respondent, based on the preponderance of evidence standard, violated College policy.

Faculty or Staff Complainant, Student Respondent

In the circumstance when a member of the faculty or staff alleging a violation of this policy by a student the investigator will prepare a case file of all interview summaries, witness statements, and other documents. The file, redacted of personally identifiable information as necessary, will be shared with the complainant and the respondent. The investigator will describe in writing for the parties the charges that will be investigated.

After reviewing the file, each party will have an opportunity:

- (1) to meet again with the investigator,
- (2) to respond in writing to the investigator,
- (3) to request the collection of other information by the investigator, and
- (4) to identify individuals who may possess relevant information (and request that such individuals be interviewed).

If any additional information is gathered, it will be shared with both parties, and each will have the opportunity for further response. The investigator will designate reasonably prompt periods to ensure a timely completion of the process but also an adequate opportunity for both sides to respond thoroughly to the information gathered in the investigation.

At the conclusion of the investigation, the investigator will prepare a report, which will include findings of fact, findings of responsibility, and the investigator's rationale. The investigator will determine whether the respondent, based on the preponderance of evidence standard, violated College policy.

Additional Accommodations

If a respondent is found responsible for violating this policy, the complainant may request accommodations not already in place, such as a one-way no contact order. The College will promptly implement the accommodation as appropriate. In no circumstance will the burden of the accommodation be placed on the complainant. The accommodation shall be effective even if the respondent files an appeal or if such an appeal is pending.

Penalties

If a student is found responsible for violating College policy, the entire case file will be forwarded to the Office of the Vice President of Student Affairs who will determine the penalty. Penalties will be determined based on the seriousness of the misconduct and the student's previous disciplinary history (if any). Remedial measures will be determined based on the need to afford the parties an educational environment free from discrimination under Title IX. The findings regarding fact and responsibility, as well as the decision regarding the penalty in cases where violations of College policy have occurred, will be conveyed to the parties at the same time in writing. The notification will include the parties' appeal rights.

If a student is found responsible for violating College policy, the Office of the Vice President for Student Affairs will record the penalty and retain records in accordance with protocols for all other disciplinary cases. In all cases, the case file will also be archived by the Title IX Coordinator.

Rights of Appeal

Both parties, the complainant and the respondent, have equal rights to an impartial appeal and to participate equally in the appeal process, even if the party is not the appealing party. All appeals will be referred to a three-person appellate body, which will be chaired by the Vice President for Student Affairs. All members of the appellate body will have training regarding Title IX and prohibited conduct defined under this policy. The members of the appellate body will be impartial and unbiased.

A complainant or respondent may file a written appeal on the grounds that:

- (1) there is substantial relevant information that was not presented, and reasonably could not have been presented during the investigation;
- (2) the imposed penalty does not fall within the range of penalties imposed for similar misconduct, or
- (3) there was procedural unfairness during the disciplinary process.

The purpose of an appeal is not to initiate a review of substantive issues of fact or a new determination of whether a violation of College rules has occurred. The appellate body may decide to uphold the original decision of the panel and/or the deans; to alter the imposed penalty; or to return the case to the panel for additional proceedings or other action. The deadline for filing an appeal is five business days from the date the parties are notified of the decision. If either party files an appeal, the Vice President for Student Affairs will notify the other party in writing. The Vice President for Student Affairs will serve as Chair for all appeals and will have primary responsibility for interactions with the parties, for the gathering of information needed for the appeal, and for notifying both parties in writing of the outcome of any appeal.

Student Enrollment

Pending action by the Office of the Vice President for Student Affairs and panel on the charges or pending an appeal, the respondent may be permitted to attend classes, and make use of some or all College facilities, except for circumstances relating to the physical or emotional safety or well-being of a member (or members) of the College community, or the ability of the College to carry out its essential functions. Certain

restrictions may be imposed on the respondent in order to provide the complainant with an educational environment free from discrimination and/or harassment under Title IX.

The respondent should understand that if the decision of the appeals panel chaired by the Vice President proves adverse, and if an appeal proves unsuccessful, the penalty will normally be considered effective as of the date of the original adjudicated decision. In cases adjudicated prior to the last day of classes, if the final decision is a separation from the College (i.e., suspension, suspension with conditions, or expulsion), the respondent will normally not earn credit for the semester in which the infraction occurred. If the case is adjudicated during reading or exam period or if the respondent has successfully completed course requirements while awaiting the final disposition of the matter, obtaining credit for the semester will be at the discretion of the Vice President. The College will seek to avoid such a deadline.

Pending an investigation and adjudication or the respondent's decision about whether to appeal a separation from the College or the withholding of the degree, and/or while an appeal is in process, an administrative hold will be placed on the respondent's College transcript. Should the respondent decide not to appeal a separation or the withholding of the degree, or should an appeal not result in an alteration of the decision to dismiss the respondent or withhold the degree, the Office of the Vice President of Student Affairs will maintain a record of the disciplinary action.

Investigation, Disciplinary, and Appeal Procedures for Cases When the Respondent Is a Faculty or Staff Member

Investigation and Adjudication

When the Title IX Coordinator receives a complaint or report alleging that a member of the faculty or staff violated this policy, the Title IX Coordinator will appoint an investigative panel of, at least, two administrators and/or outside investigators. The Title IX Coordinator will send a Notice of Investigation and Allegation (NOIA) to both parties, which outlines the allegation, supportive measures, and policy.

The investigative panel, who will have training in investigating and evaluating prohibited conduct found within this policy, will conduct an inquiry and determine, by a preponderance of the evidence, whether this policy was violated. The panelists will also be impartial and unbiased and will describe the charges under adjudication in writing for the parties.

The panel will interview the parties to the complaint separately. Each party may select an advisor of their choice who may accompany them to any meeting or related proceeding, but the adviser may not actively participate in the interview process. The advisor may be an employee of the college who also serves as leadership within a union. The advisor may not act as legal counsel or legal representation on behalf of the union or the institution. All members of the panel will be present and participate in interviews with the complainant and the respondent; one will serve as note taker. The panel will interview witnesses as necessary. Witnesses may not bring advisors. At the conclusion of each interview, the panelists will review their notes with the interviewee.

Student Complainant, Faculty Respondent

In the circumstance when the complaint is made by a student alleging a violation of this policy by a member of the faculty or staff, the panel will prepare a case file of all interview summaries, witness statements, and other documents. The file, redacted of personally identifiable information as necessary, will be shared with the complainant and the respondent. After reviewing the file, each party will have an opportunity:

- (1) to meet again with the panel,
- (2) to respond in writing and
- (3) to request the collection of other information, and
- (4) to identify individuals who may possess relevant information (and request that such individuals be interviewed).

If any additional information is gathered, it will be shared with both parties and each will have the opportunity for further response. The panel will designate reasonably prompt timeframes to ensure a timely completion of the process and communicate with both parties with adequate opportunity for both sides to provide thorough information in the investigation.

Faculty Complainant, Faculty Respondent

In the circumstance when a member of the faculty or staff alleging a violation of this policy by another member of the faculty or staff, the panel makes the complaint, the panel will prepare a case file of all interview summaries, witness statements, and other documents. The panel will present both parties within ten (10) business days a summary of the case file, after which each party will have an opportunity:

- (1) to meet again with the panel;
- (2) to provide additional written information to the panel, and;
- (3) to request the collection of other information by the panel, and;
- (4) to identify individuals who may possess relevant information (and request that such individuals be interviewed).

If any additional information is gathered, it will be shared with both parties and each will have the opportunity for further response. The panel will designate reasonably prompt timeframes to ensure a timely completion of the process and communicate with both parties with adequate opportunity for both sides to provide thorough information in the investigation.

Following the investigation, the panel will meet to determine whether the respondent, based on the preponderance of evidence standard, violated College policy. The panel will prepare a report, which will include findings of fact, findings of responsibility and the panel's rationale. All members of the panel must endorse the report as a record of their deliberations and rationale.

Rights of Appeal

Both parties, the complainant and the respondent, have equal rights to an impartial appeal and to participate equally in the appeal process, even if the party is not the appealing party. All appeals will be referred to a three-person appellate body, which will be chaired by the Vice President for Student Affairs. All members of

the appellate body will have training regarding Title IX and prohibited conduct defined under this policy. The members of the appellate body will be impartial and unbiased.

A complainant or respondent may file a written appeal on the grounds that:

- (1) there is substantial relevant information that was not presented, and reasonably could not have been presented during the investigation;
- (2) the imposed penalty does not fall within the range of penalties imposed for similar misconduct, or
- (3) there was procedural unfairness during the disciplinary process.

The purpose of an appeal is not to initiate a review of substantive issues of fact or a new determination of whether a violation of College rules has occurred. The appellate body may decide to uphold the original decision of the panel and/or the deans; to alter the imposed penalty; or to return the case to the panel for additional proceedings or other action. The deadline for filing an appeal is five business days from the date the parties are notified of the decision. If either party files an appeal, the Vice President for Human Resources will notify the other party in writing. The Vice President for Human Resources will serve as Chair for all appeals and will have primary responsibility for interactions with the parties, for the gathering of information needed for the appeal, and for notifying both parties in writing of the outcome of any appeal.

The deadline for filing an appeal is one week from the date the parties are notified of the decision. If either party files an appeal, the other party will be notified. Both parties will be notified in writing of the outcome of the appeal.

Penalties

The appropriate disciplinary authority based on the role of the respondent is as follows:

- If a faculty member is found responsible, the panel's report will be forwarded to the Vice President for Academic Affairs Resources who will determine the appropriate penalty
- If a staff member is found responsible, the panel's report will be forwarded to the staff member's vice president or executive dean, who will determine the appropriate penalty in consultation with the staff member's manager.

Penalties will be determined based on the seriousness of the misconduct as compared to like cases in the past, and on the individual's previous disciplinary history (if any). The findings regarding fact and responsibility as well as the decision regarding the penalty in cases where violations of College policies have occurred will be conveyed to the parties in person by the Vice President for Academic Affairs or a designee as well as in writing. The notification will include the parties' appeal rights. In all cases involving sex discrimination or sexual misconduct, the case file will be archived by the Title IX coordinator and Human Resources.

Additional Accommodations

If a respondent is found responsible for violating this policy, the complainant may request accommodations not already in place, such as a one-way no contact order. The College will promptly implement the

accommodation as appropriate. In no circumstance will the burden of the accommodation be placed on the complainant. The accommodation shall be effective even if the respondent files an appeal or if such an appeal is pending.

Sanctions Applicable to Students

For violations of this policy by students, in general the penalties, in ascending order of severity, are:

- *Warning*: A formal admonition that does not become part of an individual's permanent record, but may be taken into account in judging the seriousness of any future violation.
- *No Contact Letter*: A no contact letter may be sent to the respondent when the impact on the complainant's educational and working environments is so severe and pervasive that it disrupts or impedes their access. The letter may be sent from the Title IX Coordinator or from the Office of the Dean of Students.
- *Disciplinary Probation*: A more serious admonition assigned for a definite amount of time. It implies that any future violation, of whatever kind, during that time, may be grounds for suspension, suspension with conditions, or in especially serious cases, expulsion from the College. Disciplinary probation will be taken into account in judging the seriousness of any subsequent infraction even if the probationary period has expired. This appears on an individual's permanent record at the College (but not on the transcript) and may be disclosed by the Office of the Vice President for Student Affairs in response to requests for which the student has given permission or as otherwise legally required.
- *Removal from Partner Housing*: Removal of a student from College housing at a partner institution for a specific date and period of time. A student removed from Partner Housing due to disciplinary actions from a policy violation may be entitled to a refund based on the time of the semester and the approval of the Vice President of Student Affairs. If removed from Partner housing the student will not be allowed to enter residence halls. Documentation of the removal will remain on the student's permanent record for three years after separation from the College.
- *Withholding of Degree*: In cases involving students in their final semester prior to graduation, the College may withhold a student's Mercer County Community College degree.
*This sanction may not prohibit a student from participation in commencement unless their participation has the potential to cause undue harm to a student, faculty, or staff member participating in commencement.
- *Suspension*: The termination and separation from the College, which terminates their courses from that semester from a specific date and specified length of time. During suspension, a student is restricted from being on College property and may require prior notification and Security escort to conduct College related business. A student must obtain approval to visit campus, in writing, from the Dean of Students or another College Official. This severity of this disciplinary

sanction is reserved for cases where the relevant facts and aggravating circumstances support the sanction and where temporary removal from the College is necessary for campus safety.

- *Expulsion*: Permanent dismissal from the College and restriction from College property. Individuals receiving this sanction will have the sanction retained on their permanent record indefinitely in the Office of the Vice President for Student Affairs. This action marks the most severe disciplinary sanction and is generally reserved for cases where the relevant facts and aggravating circumstances support the sanction and where removal from the College is necessary for campus safety.

Disciplinary Actions for Faculty and Staff

For any violation of this policy by faculty or staff in any portion may be subject to appropriate administrative and/or disciplinary action which may include, but which shall not be limited to: referral to professional counseling services, suspension, reassignment, loss of supervisory privileges with students, loss of travel or chaperoning privileges, or termination of employment. Referral to another appropriate authority for review for possible violation of State and Federal statutes may also apply.

Training

The College will provide students and employees with Title IX when an individual is hired and/or has a change in role, annually. Further, the College will provide training on this policy and the related procedures within a reasonable period of time after each new employee's start date. For training to count, individuals must register with the Title IX Office for in person trainings or sign in using their MCCC credentials for any online trainings they participate in.

Compliance Trainings will not be posted on the website. However, trainings for investigators, decision makers, and advisors are available at www.mccc.edu/titleix

Investigators and Decision Makers must participate in annual training for the purposes of compliance of this policy and Title IX law.

REVISION DATE(S)

Interim Policy October 24, 2024

RELATED PROCEDURES, GUIDELINES, OR RESOURCES

[OMB 930 Equal Employment Opportunity](#)

[OMB 931 Prohibition Against Discrimination](#)

[OMB 965 Prohibition Against Harassment](#)

[OMB 986 Preferred Name Policy](#)

[OMB 990 Reasonable Accommodations under ADA Policy](#)

[Sexual Assault Victims Bill of Rights](#)

