

PROCEDURE FOR COMPLAINT RESOLUTION FOR DISCRIMINATION, SEXUAL AND GENDER HARASSMENT, SEXUAL MISCONDUCT AND SEXUAL VIOLENCE

I. PURPOSE

To provide a process for addressing complaints alleging all forms of sex discrimination; including sexual harassment, sexual assault and sexual violence against employees, students, and third parties.

II. POLICY

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

III. PROCEDURES

A. Filing a Complaint or Report with the Title IX Coordinator

Individuals are encouraged to report any alleged violation of this policy directly to the Title IX Coordinator. In order to do so, individuals may use the [Title IX complaint form](http://www.mccc.edu/communication_form.shtml) found at the following URL link: http://www.mccc.edu/communication_form.shtml).

or schedule an appointment with the Title IX Coordinator.

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Anyone who believes he or she was 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 may report it to the Title IX Coordinator.

B. Anonymous Reporting

If a complainant self-identifies but asks to remain anonymous during the investigation, the Title IX Coordinator will consider how to proceed, taking into account the

complainant's articulated concerns; the best interests of the College community; fair treatment of all individuals involved, including the respondent'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](http://www.mccc.edu/communication_form.shtml) may be filed online via the following URL link: http://www.mccc.edu/communication_form.shtml).

C. 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 may 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, but it 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.

D. Impartiality of Decision Makers

The College is committed to handling all complaints as a neutral party and as such it must 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.

E. 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.

Interim measures may include:

- Access to counseling services and assistance in arranging an initial appointment;
- Rescheduling of exams and assignments;
- Change in class schedule, including the ability to transfer course sections or withdraw from a course;
- Change in work schedule or job assignment;
- Change in campus housing;

- Providing medical services;
- Imposition of an on-campus "no contact order," an administrative remedy designed to curtail contact and communications between two or more individuals; and/or
- Any other remedy that can be used to achieve the goals of this policy.

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 and disciplinary penalties can be imposed for failing to abide by a College-imposed measure.

F. Informal Process

The parties may seek an informal resolution with the assistance of a neutral party assigned by the Title IX Coordinator. 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. If a resolution cannot be reached, 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.

In order to handle complaints informally, both the complainant and the respondent must agree to this process.

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.

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

G. 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 identify individuals who may possess relevant information and request that such individuals be interviewed, to be accompanied by an adviser of their choice, and to

appeal. The College will inform all parties at regular intervals regarding the status of the complaint. The periodic updates will vary depending on the seriousness of the allegations. For example, the most serious allegations may require daily updates while less serious ones may require longer intervals. The College will concurrently provide both parties with written notification of the outcome of the process and any appeal.

1. Responsibility to Investigate

In order 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 take into account 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.

2. Initial Assessment of Complaints

The investigative process is initiated 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.
- 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.

3. Timing of Investigations and Any Related Disciplinary Proceedings

The Title IX Coordinator will seek to complete the investigation and any resulting disciplinary process and provide notice of the outcome within 60 calendar days after receipt of the complaint or report. 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. Timeframes may be extended 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.

Although cooperation with law enforcement may require the College to temporarily suspend the fact-finding aspect of a Title IX investigation, the College will promptly resume its Title IX investigation as soon as it is notified by the law enforcement agency that the agency has completed the evidence gathering process. The College will not, however, wait for the conclusion of a criminal proceeding to begin its own investigation and, if needed, will take immediate steps to provide interim measures for the complainant.

Investigations will proceed according to the aforementioned timeframes during the summer and at other times when the University 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.

4. Cooperation with Investigation and Disciplinary Procedures

Mercer County Community College expects all members of the College community to cooperate fully with the investigation and disciplinary procedures. 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. Refusal to cooperate includes delaying or failing to acknowledge requests from College officials for information, and delaying or failing to make oneself available for meetings with College officials.

It is understood that 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, however, draw any adverse inference from a respondent's silence.

5. 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 it must be remembered that 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.

6. 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.

7. Violations of College Policy Unrelated to Sexual Misconduct

In the situation when 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.

8. 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, or 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, actions taken will be reviewed promptly, typically within one week, by the appropriate College authority.

H. 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 Security and local police departments may be reached at the following phone numbers:

- Security Office (609) 570-3200
- Trenton Police Department (609) 989-4170
- West Windsor Police Department (609) 799-1222

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

1. Investigation and Adjudication

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 investigator will conduct an inquiry and determine, by a preponderance of the evidence, whether this policy was violated. The investigator will have training in investigating and evaluating conduct prohibited under the policy. The investigator will also be impartial and unbiased. The investigator will interview the parties to the complaint separately. Each party may select an adviser 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 advisers. 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.

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

2. Penalties

If a student is found responsible for violating College policy, the entire case file will be forwarded to the Associate Dean 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 Executive Dean of 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.

3. 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 Executive Dean of 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 Executive Dean of Student Affairs will notify the other party in writing. The Executive Dean of 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.

4. Student Enrollment

Pending action by the Associate Dean of Student Affairs and/or the Executive Dean of 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 under Title IX.

The respondent should understand that if the decision of the Associate Dean and/or the appeals panel chaired by the Executive Dean 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 Executive Dean.

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 registrar will record the fact of the penalty on the respondent's transcript.

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

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

The panel will interview the parties to the complaint separately. Each party may select an adviser of their choice who may accompany them to any meeting or related proceeding, but the adviser may not actively participate in the interview process. All members of the panel will participate in interviews with the complainant and the respondent. The panel will interview witnesses as necessary. Witnesses may not bring advisers. In all meetings, at least one member of the panel will serve as note taker. At the conclusion of each interview, the panelists will review their notes with the interviewee.

In the circumstance when the complaint is made by a member of the faculty or staff alleging a violation of this policy by another member of the faculty or staff, the panel will prepare a case file of all interview summaries, witness statements, and other documents. The panel will present both parties with 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 time

frames to ensure a timely completion of the process but also an adequate opportunity for both sides to provide thorough information in the investigation.

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 time frames to ensure both a timely completion of the process but also an adequate opportunity for both sides to respond thoroughly to the information gathered 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.

2. 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 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 dean of the faculty or the vice president/executive dean 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.

3. 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. 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; or (2) there was procedural unfairness.

- Written appeals must be filed with the President's Office. The President will then assign two members from the President's Leadership Team to review and issue a determination regarding the appeal.

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 authority may decide to uphold the original decision of the panel and/or disciplinary authority; to alter the imposed penalty; or to return the case to the panel for additional proceedings or other action. The appellate authority will have training regarding Title IX and prohibited conduct defined under this policy and will be impartial and unbiased.

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.

K. Range of Penalties

Members of the College community may be subject to disciplinary penalties for violating this policy.

1. 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.

2. Penalties 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 that may be taken into account in judging the seriousness of any future violation.

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.

Disciplinary probation appears on an individual's permanent record at the College (but not on the transcript) and may be disclosed by the Office of the Executive Dean of

Student Affairs in response to requests for which the student has given permission or as otherwise legally required.

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 for a specified period of time. This penalty is imposed instead of suspension at the end of senior year or final year of study when all other degree requirements have been met. A withheld degree is recorded on a student's transcript. Relevant information remains on the student's permanent record at the College and may be disclosed by the Office of the Executive Dean of Student Affairs in response to requests for which the student has given permission or as otherwise legally required.

Suspension: Removal from the College for a specified period of time. A suspension is recorded on a student's transcript. Relevant information remains on the student's permanent record at the College and may be disclosed by the Office of the Executive Dean of Student Affairs in response to requests for which the student has given permission or as otherwise legally required.

Suspension with Conditions: Removal from the College for at least the period of time specified by the suspension, with the suspension to continue until certain conditions, stipulated by the appropriate body applying this penalty, have been fulfilled. These conditions may include, but are not limited to, restitution of damages, formal apology, or counseling. A suspension with conditions is recorded on a student's transcript. Relevant information remains on the student's permanent record at the College and may be disclosed by the Office of the Executive Dean of Student Affairs in response to requests for which the student has given permission or as otherwise legally required.

Expulsion: Permanent removal from the College, without any opportunity for readmission to the community. Expulsion is recorded on a student's transcript. Relevant information remains on the student's permanent record at the College and may be disclosed by the Office of the Executive Dean of Student Affairs in response to requests for which the student has given permission or as otherwise legally required.

The following may accompany the preceding penalties, as appropriate:

Restriction of Access to Space, Resources, and Activities: When appropriate in cases involving behavioral misconduct between members of the community, restrictions may be placed on access to space and/or resources or on participation in activities so as to limit opportunities for contact among the parties.

3. Penalties Applicable to Faculty and Staff Members

For violations of this policy by faculty or staff members, disciplinary penalties may include verbal warning, counseling or training, written warning, suspension, or termination.

4. Penalties Applicable to Non-Members of the College Community

For violations of this policy by non-members of the College community, disciplinary penalties may include being temporarily or permanently barred from the College or subject to other restrictions.