

# McLennan Community College Procedure Guide

Reference:	Procedure Guide to F-V-s	Effective Date:	12/01/2023
Subject:	Discrimination, Harassment, and Retaliation Resolution Process		
Source:	President		
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Approved by Leadership Team:	Hills:	Benson:	McKown:
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Remarks:			

## **Discrimination, Harassment, and Retaliation Resolution Process**

The following guide serves to assist individuals conducting resolution related to Discrimination, Harassment, and Retaliation (DHR) noted in the following institutional policies:

- *General Conduct Policy (Policy E-VIII)*
- *Student Investigation Procedures (Policy E-VIII-a)*
- *ADA Grievance Policy (Policy E-XXXIII)*
- *Employee Grievance Procedure (Policy F-V-h)*
- *Discrimination Resolution Process (Policy F-V-s)*
- *Sexual Misconduct Policy (Policy E-XXVIII-a)*
- *Student Grievance Procedure (Policy G-XIII)*

See [Appendix A](#) for a Glossary of Terms as related to this document.

See [Appendix B](#) for Rights of the Parties as related to this document.

See [Appendix C](#) for Right to an Advisor as related to this document.

### **Reporting Discrimination**

There is no time limitation on the filing of allegations subject to Title IX protections, all other discrimination reporting will follow Federal and Texas statute limitations. However, if the Respondent is no longer subject to McLennan Community College's jurisdiction, the ability to investigate, respond and provide remedies may be limited.

To be eligible to file allegations the Complainant must: 1) be a currently enrolled in or registered for credit or non-credit student at the college, 2) be attempting to apply, register, and/or enroll in credit or non-credit courses, 3) be currently employed at the college, or 4) be attempting to apply for employment at the college.

## POLICIES AND PROCEDURES

Reports of discrimination, harassment and/or retaliation may be made using any of the following options:

1. Title IX Coordinator(s):
  - Dr. Claudette Jackson, Title IX Coordinator, at 254-299-8465, Student Services Building, Room 319 or [titleix@mclennan.edu](mailto:titleix@mclennan.edu) ;
  - Missy Kittner, Deputy Title IX Coordinator, at 254-299-8514, Administration Building, Room or [mkittner@mclennan.edu](mailto:mkittner@mclennan.edu);
  - Kelli Nehring, Deputy Title IX Coordinator, at 254-299-8520, Student Services Building 319A or [knehring@mclennan.edu](mailto:knehring@mclennan.edu);
  - Shawn Trochim, Deputy Title IX Coordinator, at 254-299-8811, Math, Fitness, and Wellness Building, Room 109 or [strochim@mclennan.edu](mailto:strochim@mclennan.edu)
2. Equal Employment Opportunity Officer(s):
  - Al Pollard, EEO Officer, at 254-299- 8669, Administration Building, Room 417 or [apollard@mclennan.edu](mailto:apollard@mclennan.edu);
  - Missy Kittner, Deputy EEO Officer, at 254-299-8514, Administration Building, Room 104 or [mkittner@mclennan.edu](mailto:mkittner@mclennan.edu);
3. ADA Officer(s):
  - Dr. Claudette Jackson, at 254-299-8465, Student Services Building, Room 319 or [cjackson@mclennan.edu](mailto:cjackson@mclennan.edu);
  - Dr. Stephen Benson, at 254-299-8649, Administration Building, Room 410 or [sbenson@mclennan.edu](mailto:sbenson@mclennan.edu);
4. Discrimination, Harassment, and Retaliation Resolution Process (DHR) Administrator:
  - The DHR Administrator is a designee of the President
  - Dr. Laura Wichman, at 254-299-8476, Administration Building, Room 404 or [lwichman@mclennan.edu](mailto:lwichman@mclennan.edu);
5. Online: <https://www.lighthouse-services.com/mclennan/>;
6. Confidentially to the MCC Counseling Center: 254-299-8210; or
7. Emergencies: Campus Police, 254-299-8911.

## POLICIES AND PROCEDURES

### Resolution Process A

#### Overview

McLennan Community College (MCC) will act on any formal notice/complaint of violation of the Equal Opportunity, Harassment, and Nondiscrimination Policy (“the Policy”) that is received by the Title IX Coordinator<sup>1</sup> or any other above listed official by applying these procedures, known as “Process A.”

The procedures below apply only to qualifying allegations of Title IX Sexual Harassment (including sexual assault, dating violence, domestic violence, and sex/gender-based stalking, as defined in the Policy) involving students, staff, administrators, or faculty members. The procedures may also be used to address alleged collateral misconduct by the Respondent arising from the investigation of or occurring in conjunction with reported misconduct (e.g., vandalism, physical abuse of another), when alleged violations of the Policy are being addressed at the same time. In such cases, the Title IX Coordinator may consult with the institution officials who typically oversee such conduct (e.g., human resources, student conduct, academic affairs, etc.) to provide input as needed. All other allegations of misconduct unrelated to incidents covered by the Policy will be addressed through procedures described in the applicable policies.

If other Policy definitions are invoked, such as protected characteristic harassment or discrimination as defined above, please see the section titled “[Resolution Process B](#)” for a description of the procedures applicable to the resolution of such offenses.

#### **I. Notice/Complaint**

Upon receipt of a Formal Complaint<sup>2</sup> or notice of an alleged policy violation by the Title IX Coordinator, the Title IX Coordinator initiates a prompt initial assessment to determine the next steps to take. The Title IX Coordinator will contact the Complainant to offer supportive measures and determine whether the Complainant wishes to file a Formal Complaint.

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<sup>1</sup> Anywhere Resolution Process A indicates “Title IX Coordinator,” a trained designee may substitute

<sup>2</sup> Formal Complaints cannot be verbal. Formal Complaints must be received in a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the recipient) that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint

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The Title IX Coordinator will then initiate at least one of three responses:

- 1) Offering supportive measures because the Complainant does not want to file a Formal Complaint
- 2) An Informal Resolution (upon submission of a Formal Complaint)
- 3) A Formal Grievance Process including an investigation and a hearing (upon submission of a Formal Complaint)

The below Process as described below will be used to determine whether the Policy has been violated. If so, the Title IX Coordinator will promptly implement effective remedies designed to ensure that it is not deliberately indifferent to harassment or discrimination, their potential recurrence, and/or their effects.

### II. Initial Assessment

Following receipt of notice or a Formal Complaint of an alleged violation of this Policy, the Title IX Coordinator engages in an initial assessment, typically within one to five (1-5) business days. The steps in an initial assessment can include:

- The Title IX Coordinator seeks to determine if the person impacted wishes to make a Formal Complaint, and will assist them to do so, if desired.
  - If they do not wish to do so, the Title IX Coordinator determines whether to initiate a complaint themselves – such as if the violence risk assessment indicates a compelling threat to health and/or safety.
- If a Formal Complaint is received, the Title IX Coordinator assesses its sufficiency and works with the Complainant to make sure it is correctly completed.
- The Title IX Coordinator reaches out to the Complainant to offer supportive measures.
- The Title IX Coordinator works with the Complainant to ensure they are aware of the right to have an Advisor.
- The Title IX Coordinator works with the Complainant to determine whether the Complainant prefers a supportive and remedial response, an Informal Resolution option, or a formal investigation and grievance process.
  - If a supportive and remedial response is preferred, the Title IX Coordinator works with the Complainant to identify their needs, determine appropriate supports, and implements accordingly. No Formal Grievance Process is initiated, though the Complainant can elect to initiate one later, if desired.
  - If an Informal Resolution option is preferred, the Title IX Coordinator assesses:
    - Whether the complaint is suitable for Informal Resolution<sup>3</sup>

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<sup>3</sup> Per the 2020 Title IX regulations, recipients are prohibited from Informal Resolution of a complaint by a student against an employee.

## POLICIES AND PROCEDURES

- Which informal mechanism may serve the situation best or is available
- May seek to determine if the Respondent is also willing to engage in Informal Resolution.
- If a Formal Grievance Process is preferred by the Complainant, the Title IX Coordinator determines if the alleged misconduct falls within the scope of the 2020 Title IX regulations<sup>4</sup>:
  - If it does, the Title IX Coordinator will initiate the formal investigation and grievance process, directing the investigation to address, based on the nature of the complaint:
    - an incident, and/or
    - a pattern of alleged misconduct, and/or
    - a culture/climate issue
  - If alleged misconduct does not fall within the scope of the Title IX regulations, the Title IX Coordinator:
    - Determines that the regulations do not apply
    - Will “dismiss” that aspect of the complaint, if any
    - Assesses which policies may apply
    - Which Resolution Process is applicable, and
    - Will refer the matter accordingly, including referring the matter for resolution under Process B, if applicable

### **A. Violence Risk Assessment**

In some cases, the Title IX Coordinator may determine that a Violence Risk Assessment (VRA) should be conducted by a trained Campus Assessment Response & Evaluation (C.A.R.E.) Team member as part of the initial assessment. A VRA can aid in critical and/or required determinations, including:

- 1) Emergency removal of a Respondent on the basis of immediate threat to an individual or the community’s physical health/safety
- 2) Whether the Title IX Coordinator should pursue/sign a Formal Complaint absent a willing/able Complainant
- 3) Whether the scope of the investigation should include an incident, and/or pattern of misconduct, and/or climate of hostility/harassment
- 4) To help identify potential predatory conduct
- 5) Whether it is reasonable to try to resolve a complaint through Informal Resolution, and if so, what approach may be most successful
- 6) Whether to permit a voluntary withdrawal by the Respondent
- 7) Assessment of appropriate sanctions/remedies

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<sup>4</sup> Note that dismissing a complaint under the 2020 Title IX regulations is solely a procedural requirement under Title IX, which does not limit MCC’s authority to address a complaint with an appropriate process and remedies.

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- 8) Whether a Clery Act Timely Warning/Trespass order/Persona-non-grata is needed

Threat assessment is the process of evaluating the actionability of violence by an individual against another person or group following the issuance of a direct or conditional threat. A VRA is a broader term used to assess any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat.

A VRA authorized by the Title IX Coordinator should occur in collaboration with the C.A.R.E. Team. Where a VRA is required by the Title IX Coordinator, a Respondent refusing to cooperate may result in a charge of failure to comply within the appropriate student or employee conduct process.

A VRA is not an evaluation for an involuntary behavioral health hospitalization, nor is it a psychological or mental health assessment. A VRA assesses the risk of actionable violence, often with a focus on targeted/predatory escalations, and is supported by research from the fields of law enforcement, criminology, human resources, and psychology.

### **B. Dismissal (Mandatory and Discretionary)**<sup>5</sup>

MCC must dismiss a Formal Complaint or any allegations therein if, at any time during the investigation or hearing, it is determined that:

- 1) The conduct alleged in the Formal Complaint would not constitute Title IX Sexual Harassment as defined above, even if proved
- 2) The conduct did not occur in an educational program or activity controlled by MCC (including buildings or property controlled by recognized student organizations), and/or MCC does not have control of the Respondent
- 3) The conduct did not occur against a person in the United States
- 4) At the time of filing a Formal Complaint, a Complainant is not participating in or attempting to participate in MCC's education program or activity, and based on the available information, the Title IX Coordinator has determined that they do not need to sign a Formal Complaint on behalf of MCC<sup>6</sup>

MCC may dismiss a Formal Complaint or any allegations therein if, at any time during the investigation or hearing:

- 1) A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein

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<sup>5</sup> These dismissal requirements are mandated by the 2020 Title IX Regulations, 34 CFR §106.45.

<sup>6</sup> Such a Complainant is still entitled to supportive measures, but the formal grievance process is not applicable unless the Title IX Coordinator signs the complaint in the event the Complainant cannot/will not do so.

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- 2) The Respondent is no longer enrolled in or employed by MCC
- 3) Specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein

A Complainant who decides to withdraw a complaint may later request to reinstate it or refile it.

Upon any dismissal, MCC will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties.

This dismissal decision is appealable by any party under the procedures for appeal.

### III. Counterclaims

MCC is obligated to ensure that the grievance process is not abused for retaliatory purposes, thus counterclaims made with retaliatory intent will not be permitted. MCC permits the filing of counterclaims but uses an initial assessment, described above, to assess whether the allegations in the counterclaim are made in good faith.

Counterclaims determined to have been reported in good faith will be processed using the Resolution Process below. Investigation of such claims may take place after resolution of the underlying initial complaint, in which case a delay may occur.

Counterclaims may also be resolved through the same investigation as the underlying complaint, at the discretion of the Title IX Coordinator. When counterclaims are not made in good faith, they will be considered retaliatory and may constitute a violation of this policy.

### IV. Right to an Advisor

The parties may each have an Advisor of their choice present with them for all meetings, interviews, and hearings within the Resolution Process, if they so choose. The parties may select whoever they wish to serve as their Advisor as long as the Advisor is eligible and available.

Choosing an Advisor who is also a witness in the process creates potential for bias and conflict of interest. A party who chooses an Advisor who is also a witness can anticipate that issues of potential bias will be explored by the hearing Decision-maker(s).

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MCC may permit parties to have more than one Advisor upon special request to the Title IX Coordinator. The decision to grant this request is at the sole discretion of the Title IX Coordinator and will be granted equitably to all parties.

See [Appendix C](#). for details on the Rights, Roles and Expectations of Advisors.

### V. **Resolution Processes**

Resolution proceedings are private. All persons present at any time during the Resolution Process are expected to maintain the privacy of the proceedings in accordance with MCC's Policy.

Although there is an expectation of privacy around what Investigators share with parties during interviews, the parties have discretion to share their own knowledge and evidence with others if they so choose, except for information the parties agree not to disclose as part of an Informal Resolution. MCC encourages parties to discuss any sharing of information with their Advisors<sup>7</sup> before doing so.

The Formal Grievance Process is MCC primary resolution approach unless Informal Resolution is elected by all parties and MCC.

#### A. **Informal Resolution**

Three options for Informal Resolution are detailed in this section.

- 1) **Supportive Resolution.** When the Title IX Coordinator can resolve the matter informally by providing supportive measures (only) to remedy the situation
- 2) **Alternative Resolution.** When the parties agree to resolve the matter through an alternative resolution mechanism (including mediation, restorative practices, facilitated dialogue, etc.), as described below, often before a formal investigation takes place (See [Section B](#))
- 3) **Accepted Responsibility.** When the Respondent accepts responsibility for violating policy, and desires to accept the recommended sanction(s) and end the Resolution Process.

To initiate Informal Resolution, a Complainant must submit a Formal Complaint, as defined above. A Respondent who wishes to initiate Informal Resolution should contact the Title IX Coordinator. The parties may agree, as a condition of engaging in Informal Resolution, that statements made, or evidence shared,

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<sup>7</sup> See Appendix [B] for more information on Advisors and their role/expectations.

## POLICIES AND PROCEDURES

during the Informal Resolution process will not be considered in the Formal Grievance Process unless all parties consent.

It is not necessary to pursue Informal Resolution first in order to pursue a Formal Grievance Process, and any party participating in Informal Resolution can stop the process at any time and begin or resume the Formal Grievance Process. The Title IX Coordinator has discretion to determine if an investigation will be paused during Informal Resolution, or if it will be limited, or will continue during the Informal Resolution process.

Prior to implementing Informal Resolution, MCC will provide the parties with written notice of the reported misconduct and any sanctions (only in the case of Accepted Responsibility) or measures that may result from participating in such a process, including information regarding any records that will be maintained or shared by MCC.

MCC will obtain voluntary, written confirmation that all parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the parties to participate in Informal Resolution.

### **B. Alternative Resolution Approaches**

Alternative Resolution is an informal approach (including mediation, restorative practices, facilitated dialogue, etc.) by which the parties reach a mutually agreed upon resolution of a complaint. All parties must consent to the use of an Alternative Resolution approach.

The Title IX Coordinator may consider the following factors to assess whether Alternative Resolution is appropriate, or which form of Alternative Resolution may be most successful for the parties:

- The parties' amenability to Alternative Resolution
- Likelihood of potential resolution, considering any power dynamics between the parties
- The nature and severity of the alleged misconduct
- The parties' motivation to participate
- Civility of the parties
- Results of a violence risk assessment/ongoing risk analysis
- Disciplinary history of the Respondent
- Whether an emergency removal is needed
- Skill of the Alternative Resolution facilitator with this type of complaint
- Complaint complexity
- Emotional investment/capability of the parties

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- Rationality of the parties
- Goals of the parties
- Adequate resources to invest in Alternative Resolution (time, staff, etc.)

The ultimate determination of whether Alternative Resolution is available or successful is made by the Title IX Coordinator. The Title IX Coordinator is authorized to facilitate a resolution that is acceptable to all parties, and/or to accept a resolution that is proposed by the parties, usually through their Advisors, including terms of confidentiality, release, and non-disparagement.

The Title IX Coordinator maintains records of any resolution that is reached, and failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions (e.g., referral for formal resolution, referral to the conduct process for failure to comply). Results of complaints resolved by Alternative Resolution are not appealable.

### **C. Respondent Accepts Responsibility for Alleged Violations**

The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the Resolution Process. If the Respondent indicates an intent to accept responsibility for all of the alleged misconduct, the formal process will be paused, and the Title IX Coordinator will determine whether Informal Resolution can be used according to the criteria above.

If Informal Resolution is applicable, the Title IX Coordinator will determine whether all parties are able to agree on responsibility, restrictions and/or remedies. If so, the Title IX Coordinator implements the accepted finding that the Respondent is in violation of MCC's policy and implements agreed-upon restrictions and remedies and determines the appropriate sanction(s) in coordination with other appropriate administrator(s), as necessary.

This result is not subject to appeal once all parties indicate their written assent to all agreed upon resolution terms. When the parties cannot agree on all terms of resolution, the Formal Grievance Process will resume at the same point where it was paused.

When a resolution is accomplished, the appropriate sanction(s) or responsive actions are promptly implemented to effectively stop the harassment or discrimination, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the Complainant and the community.

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### VI. **Formal Grievance Process Pool**

The Formal Grievance Process relies on a pool of administrators<sup>8</sup> (“the Pool”) to carry out the process.

#### **A. Pool Member Roles**

Members of the Pool are trained annually, and can serve in in the following roles, at the discretion of the Title IX Coordinator:

- To provide appropriate intake of and initial guidance pertaining to complaints
- To act as an Advisor to the parties
- To serve in a facilitation role in Informal Resolution or Alternative Resolution if appropriately trained in appropriate resolution approaches (e.g., mediation, restorative practices, facilitated dialogue)
- To perform or assist with initial assessment
- To investigate complaints
- To serve as a hearing facilitator (process administrator, no decision-making role)
- To serve as a Decision-maker regarding the complaint
- To serve as an Appeal Decision-maker

#### **B. Pool Member Appointment**

The Title IX Coordinator, in consultation with the President, appoints the Pool, which acts with independence and impartiality. Although members of the Pool are typically trained in a variety of skill sets and can rotate amongst the different roles listed above in different complaints, MCC can also designate permanent roles for individuals in the Pool, using others as substitutes or to provide greater depth of experience when necessary. This process of role assignment may be the result of particular skills, aptitudes, or talents identified in members of the Pool that make them best suited to particular roles.

#### **C. Pool Member Training**

Pool members receive annual training based on their respective roles. This training includes, but is not limited to:

- The scope of the MCC’s Equal Opportunity, Harassment, and Nondiscrimination Policy and Procedures
- How to conduct investigations and hearings that protect the safety of Complainants and Respondents, and promote accountability

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<sup>8</sup> External, trained third-party neutral professionals may also be used to serve in Pool roles

## POLICIES AND PROCEDURES

- Implicit bias
- Disparate treatment
- Reporting, confidentiality, and privacy requirements
- Applicable laws, regulations, and federal regulatory guidance
- How to implement appropriate and situation-specific remedies
- How to investigate in a thorough, reliable, timely, and impartial manner
- How to conduct a sexual harassment investigation
- Trauma-informed practices pertaining to investigations and resolution processes
- How to uphold fairness, equity, and due process
- How to weigh evidence
- How to conduct questioning
- How to assess credibility
- Impartiality and objectivity
- How to render findings and generate clear, concise, evidence-based rationales
- The definitions of all offenses
- How to apply definitions used by MCC with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with policy
- How to conduct an investigation and grievance process including hearings, appeals, and Informal Resolution Processes
- How to serve impartially by avoiding prejudgment of the facts at issue, conflicts of interest, and bias against Respondents and/or for Complainants, and on the basis of sex, race, religion, and other protected characteristics
- Any technology to be used at a live hearing
- Issues of relevance of questions and evidence
- Issues of relevance to create an investigation report that fairly summarizes relevant evidence
- How to determine appropriate sanctions in reference to all forms of harassment, discrimination, and/or retaliation allegations
- Recordkeeping

### **VII. Formal Grievance Process: Notice of Investigation and Allegations**

The Title IX Coordinator will provide written Notice of the Investigation and Allegations (the “NOIA”) to the Respondent upon commencement of the Formal Grievance Process. This facilitates the Respondent’s ability to prepare for the interview and to identify and choose an Advisor to accompany them. The NOIA is also copied to the Complainant, who will be given advance notice of when the NOIA will be delivered to the Respondent.

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The NOIA will include:

- A meaningful summary of all allegations
- The identity of the involved parties (if known)
- The precise misconduct being alleged
- The date and location of the alleged incident(s) (if known)
- The specific policies implicated
- A description of the applicable procedures
- A statement of the potential sanctions/responsive actions that could result
- A statement that MCC presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination
- A statement that determinations of responsibility are made at the conclusion of the process and that the parties will be given an opportunity during the review and comment period to inspect and review all directly related and/or relevant evidence obtained
- A statement about MCC's policy on retaliation
- Information about the confidentiality of the process
- Information on the need for each party to have an Advisor of their choosing and suggestions for ways to identify an Advisor
- A statement informing the parties that MCC's policy prohibits knowingly making false statements, including knowingly submitting false information during the Resolution Process
- Detail on how the party may request disability accommodations during the Resolution Process
- The name(s) of the Investigator(s), along with a process to identify to the Title IX Coordinator, in advance of the interview process, any conflict of interest that the Investigator(s) may have
- An instruction to preserve any evidence that is directly related to the allegations

Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various allegations.

Notice will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address(es) of the parties as indicated in official Recipient records, or emailed to the parties' MCC-issued email or designated email accounts. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

### VIII. Resolution Timeline

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MCC will make a good faith effort to complete the Resolution Process within a sixty to ninety (60-90) business-day time period, including appeal if any, which can be extended as necessary for appropriate cause by the Title IX Coordinator, who will provide notice and rationale for any extensions or delays to the parties as appropriate, as well as an estimate of how much additional time will be needed to complete the process.

### **IX. Appointment of Investigators**

Once the decision to commence a formal investigation is made, the Title IX Coordinator appoints one or more investigators to conduct the investigation, usually within two (2) business days of determining that an investigation should proceed.

### **X. Ensuring Impartiality**

Any individual materially involved in the administration of the Resolution Process may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent.

The Title IX Coordinator will vet the assigned Investigator(s) for impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. At any time during the Resolution Process, the parties may raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another investigator will be assigned and the impact of the bias or conflict, if any, will be remedied. If the source of the conflict of interest or bias is the Title IX Coordinator, concerns should be raised with the College President.

The Formal Grievance Process involves an objective evaluation of all relevant evidence obtained, including evidence that supports that the Respondent engaged in a policy violation and evidence that supports that the Respondent did not engage in a policy violation. Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or witness.

MCC operates with the presumption that the Respondent is not responsible for the reported misconduct unless and until the Respondent is determined to be responsible for a policy violation by the applicable standard of proof.

### **XI. Investigation Timeline**

Investigations are completed expeditiously, normally within sixty (60) business days, though some investigations may take many weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, law enforcement involvement, etc.

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MCC will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation.

### **XII. Investigation Process Delays and Interactions with Law Enforcement**

MCC may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include but are not limited to: a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of parties and/or witnesses, and/or health conditions.

The Title IX Coordinator will communicate the anticipated duration of the delay and reason to the parties in writing and provide the parties with status updates if necessary, and will promptly resume its investigation and Resolution Process as soon as feasible. During such a delay, the Title IX Coordinator will implement supportive measures as deemed appropriate.

DHR processes are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

### **XIII. Investigation Process Steps**

All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all available relevant parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary.

All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence and expert witnesses, and to fully review and respond to all evidence on the record.

At the discretion of the Title IX Coordinator, investigations can be combined when complaints implicate a pattern, collusion, and/or other shared or similar actions.

The Investigator(s) typically take(s) the following steps, if not already completed (not necessarily in this order):

- Determine the identity and contact information of the Complainant
- Identify all policies implicated by the alleged misconduct and notify the Complainant and Respondent of all of the specific policies implicated
- Assist the Title IX Coordinator, if needed, with conducting a prompt initial assessment to determine if the allegations indicate a potential policy violation

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- Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for the parties and witnesses
- Meet with the Complainant to finalize their interview/statement, if necessary
- Work with the Title IX Coordinator, as necessary, to prepare the initial Notice of Investigation and Allegations (NOIA). The NOIA may be amended with any additional or dismissed allegations
  - Notice should inform the parties of their right to have the assistance of an Advisor, who could be an investigator or an Advisor of their choosing present for all meetings attended by the party
- Provide each interviewed party and witness an opportunity to review and verify the Investigator's summary notes (or transcript) of the relevant evidence/testimony from their respective interviews and meetings
- Make good faith efforts to notify each party of any meeting or interview involving another party, in advance when possible
- When participation of a party is expected, provide that party with written notice of the date, time, and location of the meeting, as well as the expected participants and purpose
- Interview all available, relevant witnesses and conduct follow-up interviews as necessary
- Allow each party the opportunity to suggest witnesses and questions they wish the Investigator(s) to ask of another party and/or witnesses, and document in the report which questions were asked, with a rationale for any changes or omissions
- Complete the investigation promptly and without unreasonable deviation from the intended timeline
- Provide regular status updates to the parties throughout the investigation
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) with a list of witnesses whose information will be used to render a finding
- Write a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence. Appendices including relevant physical or documentary evidence will be included
- Gather, assess, and synthesize evidence, but make no conclusions, engage in no policy analysis, and render no recommendations as part of their report
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) a secured electronic or hard copy of the draft investigation report as well as an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported misconduct, including evidence upon which MCC does not intend to rely in reaching a determination, for a ten (10) business-day review and comment period so that each party may meaningfully respond to the evidence. The parties may elect to waive the full ten (10) days.

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- Elect to respond in writing in the investigation report to the parties' submitted responses and/or to share the responses between the parties for additional responses
- Incorporate relevant elements of the parties' written responses into the final investigation report, include any additional relevant evidence, make any necessary revisions, and finalize the report. The Investigator(s) should document all rationales for any changes made after the review and comment period.
- Incorporate any relevant feedback and share the final report with all parties and their Advisors through secure electronic transmission or hard copy at least ten (10) business days prior to a hearing. The parties and Advisors are also provided with a file of any directly related evidence that was not included in the report.

### **XIV. Witness Role and Participation in the Investigation**

Witnesses (as distinguished from the parties) who are employees of MCC are strongly encouraged to cooperate with and participate in MCC's investigation and Resolution Process. Student witnesses and witnesses from outside the MCC community are encouraged to cooperate with investigations and to share what they know about a complaint.

Although in-person interviews for parties and all potential witnesses are ideal, circumstances (e.g., study abroad, summer break) may require individuals to be interviewed remotely. Skype, Zoom, Microsoft Teams, FaceTime, WebEx, or similar technologies may be used for interviews if the Investigator(s) determine that timeliness, efficiency, or other reasons dictate a need for remote interviewing. MCC will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

Witnesses may also provide written statements in lieu of interviews or choose to respond to written questions, if deemed appropriate by the Investigator(s), though not preferred.

### **XV. Interview Recording**

No unauthorized audio or video recording of any kind is permitted during investigation meetings. If Investigator(s) elect to audio and/or video record interviews, all involved parties will be made aware of audio and/or video recording. Texas has a "one-party consent" law that requires that only one party to the conversation has to consent to audio and/or video recording.

### **XVI. Evidentiary Considerations**

Neither the investigation nor the hearing will consider: (1) incidents not relevant or not directly related to the possible violation(s), unless they evidence a pattern; or (2) questions and evidence about the Complainant's sexual predisposition; or (3) questions

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and evidence about the Complainant's prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

Within the boundaries stated above, the investigation and the hearing can consider character evidence generally, if offered, but that evidence is unlikely to be relevant unless it is fact evidence or relates to a pattern of conduct.

### **XVII. Referral for Hearing**

Provided that the complaint is not resolved through Informal Resolution, once the final investigation report is shared with the parties, the Title IX Coordinator will refer the matter for a hearing.

The hearing cannot be held less than ten (10) business days from the conclusion of the investigation—when the final investigation report is transmitted to the parties and the Decision-maker(s)—unless all parties and the Decision-maker(s) agree to an expedited timeline.

The Title IX Coordinator will select an appropriate Decision-maker and provide a copy of the investigation report and the file of directly related evidence. Allegations involving student-employees in the context of their employment will be directed to the appropriate Decision-maker(s) depending on the context and nature of the alleged misconduct.

### **XVIII. Hearing Decision-maker Composition**

MCC will designate a single Decision-maker from the Investigators Pool, at the discretion of the Title IX Coordinator. The single Decision-maker will also Chair the hearing.

The Decision-maker(s) will not have had any previous involvement with the complaint. The Title IX Coordinator may elect to have an alternate from the Investigators sit in throughout the hearing process in the event that a substitute is needed for any reason.

Those who have served as Investigators will be witnesses in the hearing and therefore may not serve as Decision-makers. Those who are serving as Advisors for any party may not serve as Decision-makers in that matter.

The Title IX Coordinator may not serve as a Decision-maker in the matter but may serve as an administrative facilitator of the hearing if their previous role(s) in the matter do not create a conflict of interest. Otherwise, a designee may fulfill the facilitator role. The

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hearing will convene at a time and venue determined by the Title IX Coordinator or designee.

### **XIX. Additional Evidentiary Considerations in the Hearing**

Previous disciplinary action of any kind involving the Respondent may not be used unless there is an allegation of a pattern of misconduct. Such information may also be considered in determining an appropriate sanction upon a determination of responsibility, assuming the Recipient uses a progressive discipline system. This information is only considered at the sanction stage of the process and is not shared until then.

The parties may each submit a written impact and/or mitigation statement prior to the hearing for the consideration of the Decision-maker(s) at the sanction stage of the process when a determination of responsibility is reached.

After post-hearing deliberation, the Decision-maker(s) render(s) a determination based on the preponderance of the evidence; whether it is more likely than not that the Respondent violated the Policy as alleged OR clear and convincing evidence; whether there is a high probability that the Respondent violated the Policy as alleged.

### **XX. Hearing Notice**

No less than ten (10) business days prior to the hearing, the Title IX Coordinator or Chair will send notice of the hearing to the parties. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The notice will contain:

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable hearing procedures, and a statement of the potential sanctions/responsive actions that could result.
- The time, date, and location of the hearing.
- Description of any technology that will be used to facilitate the hearing.
- Information about the option for the live hearing to occur with the parties located in separate rooms using technology that enables the Decision-maker(s) and parties to see and hear a party or witness answering questions. Such a request must be raised with the Title IX Coordinator as soon as possible, preferably at least five (5) business days prior to the hearing.
- A list of all those who will attend the hearing, along with an invitation to object to any Decision-maker(s) based on demonstrated bias or conflict of interest. This must be raised with the Title IX Coordinator at least two (2) business days prior to the hearing.

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- Information on how the hearing will be recorded and how the parties can access the recording after the hearing.
- A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence. For compelling reasons, the Chair may reschedule the hearing.
- Notification that the parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present for any questions they may desire to ask. The party must notify the Title IX Coordinator if they wish to conduct cross-examination and do not have an Advisor, and MCC will appoint one. Each party must have an Advisor present if they intend to cross-examine others. There are no exceptions.
- A copy of all the materials provided to the Decision-maker(s) about the complaint unless they have already been provided.
- An invitation to each party to submit to the Decision-maker an impact and/or mitigation statement pre-hearing that the Decision-maker(s) will review during any sanction determination.
- An invitation to contact the Title IX Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least seven (7) business days prior to the hearing.
- Whether parties can/cannot bring mobile phones/devices into the hearing.

Hearings for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to this Policy) and are unable to be resolved prior to the end of term will typically be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeline followed by MCC and remain within the 60-90 business-day goal for resolution. Employees who do not have 12-month contracts are still expected to participate in Resolution Proceedings that occur during months between contracts.

### **XXI. Alternative Hearing Participation Options**

If a party or parties prefer not to attend or cannot attend the hearing in person, the party should request alternative arrangements from the Title IX Coordinator as soon as possible, preferably at least five (5) business days prior to the hearing.

The Title IX Coordinator can arrange to use technology to allow remote testimony without compromising the fairness of the hearing. Remote options may also be needed for witnesses who cannot appear in person. Any witness who cannot attend in person should let the Title IX Coordinator know as soon as possible, preferably at least five (5) business days prior to the hearing so that appropriate arrangements can be made.

### **XXII. Pre-Hearing Preparation**

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After any necessary consultation with the parties, the Chair will provide the names of persons who have been asked to participate in the hearing, all pertinent documentary evidence, and the final investigation report to the parties at least ten (10) business days prior to the hearing.

Any witness scheduled to participate in the hearing must have been first interviewed by the Investigator(s) or have proffered a written statement or answered written questions, unless all parties and the Chair assent to the witness's participation in the hearing. The same holds for any relevant evidence that is first offered at the hearing. If the parties and Chair do not assent to the admission of evidence newly offered at the hearing, the Chair may delay the hearing and/or instruct that the investigation needs to be re-opened to consider that evidence.<sup>9</sup>

The parties will be given a list of the names of the Decision-maker(s) at least three (3) business days in advance of the hearing. All objections to any Decision-maker must be raised in writing, detailing the rationale for the objection, and must be submitted to the Title IX Coordinator as soon as possible and no later than two (2) business days prior to the hearing. Decision-makers will only be removed if the Title IX Coordinator concludes that their actual or perceived bias or conflict of interest precludes an impartial hearing of the complaint.

The Title IX Coordinator will give the Decision-maker(s) a list of the names of all parties, witnesses, and Advisors at least three (3) business days in advance of the hearing. Any Decision-maker who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the parties, witnesses, and Advisors in advance of the hearing. If a Decision-maker is unsure of whether a bias or conflict of interest exists, they must raise the concern to the Title IX Coordinator as soon as possible.

During the ten (10)-business-day period prior to the hearing, the parties have the opportunity for continued review and comment on the final investigation report and available evidence. That review and comment can be shared with the Chair at a pre-hearing meeting or at the hearing and will be exchanged between each party by the Chair.

### **XXIII. Pre-Hearing Meetings**

The Chair may convene a pre-hearing meeting(s) with the parties and/or their Advisors and invite them to submit the questions or topics they (the parties and/or their Advisors)

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<sup>9</sup> 34 C.F.R. § 668.46(k)(3)(B)(3) requires "timely and equal access to the accuser, the accused, and appropriate officials to any information that will be used during informal and formal disciplinary meetings and hearings."

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wish to ask or discuss at the hearing, so that the Chair can rule on their relevance ahead of time to avoid any improper evidentiary introduction in the hearing or to provide recommendations for more appropriate phrasing.

However, this advance review opportunity does not preclude the Advisors from asking a question for the first time at the hearing or from asking for a reconsideration on a pre-hearing ruling by the Chair based on any new information or testimony offered at the hearing. The Chair must document and share with each party their rationale for any exclusion or inclusion at a pre-hearing meeting.

At each pre-hearing meeting with a party and/or their Advisor, the Chair will consider arguments that evidence identified in the final investigation report as relevant is, in fact, not relevant. Similarly, evidence identified as directly related but not relevant by the Investigator(s) may be argued to be relevant. The Chair may rule on these arguments pre-hearing and will exchange those rulings between the parties prior to the hearing to assist in preparation for the hearing. The Chair may consult with legal counsel and/or the Title IX Coordinator or ask either or both to attend pre-hearing meetings.

The pre-hearing meeting(s) will not be recorded. The pre-hearing meetings may be conducted as separate meetings with each party/Advisor, with all parties/Advisors present at the same time, remotely, or as a written-only exchange. The Chair will work with the parties to establish the format.

### **XXIV. Hearing Procedures**

At the hearing, the Decision-maker(s) have the authority to hear and make determinations on all allegations of discrimination, harassment, and/or retaliation and may also hear and make determinations on any additional alleged policy violations that occurred in concert with the discrimination, harassment, and/or retaliation, even though those collateral allegations may not specifically fall within the Equal Opportunity, Harassment, and Nondiscrimination Policy.

Participants at the hearing will include the Chair, the hearing facilitator, the Investigator(s) who conducted the investigation, the parties, Advisors to the parties, any called witnesses, the Title IX Coordinator, and anyone providing authorized accommodations, interpretation, and/or assistive services.

The Chair will answer all questions of procedure.

Anyone appearing at the hearing to provide information will respond to questions on their own behalf.

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The Chair will allow witnesses who have relevant information to appear at a portion of the hearing to respond to specific questions from the Decision-maker(s) and the parties, and the witnesses will then be excused. The Investigator(s) will remain present for the duration of the hearing.

### **XXV. Joint Hearings**

In hearings involving more than one Respondent and/or involving more than one Complainant who has accused the same individual of substantially similar conduct, the default procedure will be to hear the allegations jointly.

However, the Title IX Coordinator may permit the investigation and/or hearings pertinent to each Respondent or complaint to be conducted separately if there is a compelling reason to do so. In joint hearings, separate determinations of responsibility will be made for each Respondent and/or for each complaint with respect to each alleged policy violation.

### **XXVI. The Order of the Hearing – Introductions and Explanation of Procedure**

The Chair explains the procedures and introduces the participants. This may include a final opportunity for challenge or recusal of the Decision-maker(s) based on bias or conflict of interest. The Chair will rule on any such challenge unless the Chair is the individual who is the subject of the challenge, in which case the Title IX Coordinator will review the challenge and decide.

The Chair then conducts the hearing according to the hearing script. At the hearing, recording, witness logistics, party logistics, curation of documents, separation of the parties, and other administrative elements of the hearing process are managed by a non-voting hearing facilitator/case manager appointed by the Title IX Coordinator.

### **XXVII. Investigator Presentation of Final Investigation Report**

The Investigator(s) will present a summary of the final investigation report, including items that are contested and those that are not, and will be subject to questioning by the Decision-maker(s) and the parties (through their Advisors). The Investigator(s) will be present during the entire hearing process, but not during deliberations.

Neither the parties nor the Decision-maker(s) should ask the Investigator(s) their opinions on credibility, recommended findings, or determinations, and Advisors and parties will refrain from discussion of or questions for Investigators about these assessments. If such information is introduced, the Chair will direct that it be disregarded.

### **XXVIII. Testimony and Questioning**

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Once the Investigator(s) present(s) the report and respond(s) to questions, the parties and witnesses may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the Chair. The hearing will facilitate questioning of parties and witnesses by the Decision-maker(s) and then by the parties through their Advisors.

All questions are subject to a relevance determination by the Chair. The Advisor, who will remain seated during questioning, will pose the proposed question orally, electronically, or in writing (orally is the default, but other means of submission may be permitted by the Chair upon request if agreed to by all parties and the Chair), the proceeding will pause to allow the Chair to consider the question (and state it if it has not already been stated aloud), and the Chair will determine whether the question will be permitted, disallowed, or rephrased.

The Chair may invite explanations or persuasive statements regarding relevance with the Advisors if the Chair so chooses. The Chair will then state their decision on the question for the record and advise the party/witness to whom the question was directed, accordingly. The Chair will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

The Chair will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Chair has final say on all questions and determinations of relevance. The Chair may consult with legal counsel on any questions of admissibility. The Chair may ask Advisors to frame why a question is or is not relevant from their perspective but will not entertain argument from the Advisors on relevance once the Chair has ruled on a question.

If the parties raise an issue of bias or conflict of interest of an Investigator or Decision-maker at the hearing, the Chair may elect to address those issues, consult with legal counsel, and/or refer them to the Title IX Coordinator, and/or preserve them for appeal. If bias is not in issue at the hearing, the Chair should not permit irrelevant questions that probe for bias.

### **XXIX. Refusal to Submit to Questioning: Inferences**

Any party or witness may choose not to offer evidence and/or answer questions at the hearing, either because they do not attend the hearing, or because they attend but refuse to participate in some or all questioning. The Decision-maker(s) can only rely on whatever relevant evidence is available through the investigation and hearing in making the ultimate determination of responsibility. The Decision-maker(s) may not draw any inference solely from a party's or witness's absence from the hearing or refusal to submit to cross-examination or answer other questions.

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An Advisor may not be called as a witness at a hearing to testify to what their advisee has told them during their role as an Advisor unless the party being advised consents to that information being shared. It is otherwise considered off-limits, and an Advisor who is an institutional employee is temporarily alleviated from mandated reporter responsibilities related to their interaction with their advisee during the Resolution Process.

### **XXX. Hearing Recordings**

Hearings (but not deliberations) are recorded by MCC for purposes of review in the event of an appeal. The parties may not record the proceedings and no other unauthorized recordings are permitted.

The Decision-maker(s), the parties, their Advisors, and appropriate administrators of MCC will be permitted to review the recording or review a transcript of the recording, upon request to the Title IX Coordinator. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator.

### **XXXI. Deliberation, Decision-making, and Standard of Proof**

The Decision-maker(s) will deliberate in closed session to determine whether the Respondent is responsible for the policy violation(s) in question. The preponderance of the evidence is used.

When there is a finding of responsibility on one or more of the allegations, the Decision-maker(s) may then consider the previously submitted party impact and/or mitigation statement(s) in determining appropriate sanction(s). The Chair will ensure that each of the parties has an opportunity to review any submitted impact and/or mitigation statement(s) once they are submitted.

The Decision-maker(s) will also review any pertinent conduct history provided by the appropriate administrator and will recommend the appropriate sanction(s) in consultation with other appropriate administrators, as required.

The Chair will then prepare a written statement detailing all findings and final determinations, the rationale(s) explaining the decision(s), the evidence used in support of the determination(s), the evidence not relied upon in the determination(s), any credibility assessments, and any sanction(s) or recommendation(s) and rationales explaining the sanction(s) and will deliver the statement to the Title IX Coordinator.

This statement is typically three to five (3-5) pages in length and must be submitted to the Title IX Coordinator within two (2) business days of the end of deliberations unless

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the Title IX Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will notify the parties.

### **XXXII. Notice of Outcome**

Using the deliberation statement, the Title IX Coordinator will work with the Chair to prepare a Notice of Outcome letter. The Notice of Outcome will then be reviewed by legal counsel. The Title IX Coordinator will then share the letter, which includes the final determination, rationale, and any applicable sanction(s), with the parties and their Advisors within seven (7) business days of receiving the deliberation statement.

The Notice of Outcome will be shared with the parties simultaneously. Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official MCC records, or emailed to the parties' MCC-issued email or otherwise approved account. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The Notice of Outcome will articulate the specific alleged policy violation(s), including the relevant policy section(s), and will contain a description of the procedural steps taken by MCC from the receipt of the misconduct report to the determination, including any and all notifications to the parties, interviews with parties and witnesses, site visits, methods used to obtain evidence, and hearings held.

The Notice of Outcome will specify the finding for each alleged policy violation; the findings of fact that support the determination; conclusions regarding the application of the relevant policy to the facts at issue; a statement of, and rationale for, the result of each allegation to the extent MCC is permitted to share such information under state or federal law; any sanction(s) issued which MCC is permitted to share according to state or federal law; and whether remedies will be provided to the Complainant to ensure access to MCC's educational or employment program or activity.

The Notice of Outcome will also include information on when the results are considered final by MCC, will note any changes to the outcome and/or sanction(s) that occur prior to finalization, and the relevant procedures and bases for appeal.

### **XXXIII. Rights of the Parties ([See Appendix B](#))**

### **XXXIV. Sanctions**

Factors considered when determining a sanction/responsive action may include, but are not limited to:

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- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- The need for sanctions/responsive actions to bring an end to the discrimination, harassment, and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment, and/or retaliation
- The need to remedy the effects of the discrimination, harassment, and/or retaliation on the Complainant and the community
- The impact on the parties
- Any other information deemed relevant by the Decision-maker(s)

The sanctions will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.

The sanctions described in this Policy are not exclusive of, and may be in addition to, other actions taken, or sanctions imposed, by external authorities.

If it is later determined that a party or witness intentionally provided false or misleading information, that action could be grounds for re-opening a grievance process at any time, and/or referring that information to another process for resolution.

### **A. Student Sanctions**

The following are the common sanctions that may be imposed upon students singly or in combination:<sup>10</sup>

- 1) Disciplinary Sanctions are defined as the primary outcome of the alleged violation. If found responsible, the range of sanctions include the following outcomes:
  - *Disciplinary Reprimand*: The disciplinary reprimand is an official written notification using the notification procedure outlined in Article VII Section E. of the General Conduct Policy, to the student that the action in question was misconduct;
  - *Disciplinary Probation*: Disciplinary probation is a period of time during which a student's conduct will be observed and reviewed. The student must demonstrate the ability to comply with college policies, rules, and/or standards and any other requirement stipulated for the probationary period.
  - *Deferred Disciplinary Suspension*: Deferred disciplinary Suspension is a period of time where a disciplinary suspension may be deferred

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<sup>10</sup> Recipient policies on transcript notation will apply to these proceedings.

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for a period of observation and review, but in no case will the deferred suspension be less than the remainder of the semester.

- *Disciplinary Suspension:* Disciplinary suspension is a specific period of time in which a student may not participate in classes or college-related activities. Notification of disciplinary suspension will indicate the date suspension begins and the earliest date the application for student readmission will be considered. A registration hold will be placed on the student's account in order to prevent returning to classes during this period. The Director, Accommodations & Title IX may deny a student's readmission, if the student's misconduct during the suspension would have warranted additional disciplinary action. If the student has failed to satisfy any sanctions, conditions and/or restrictions that have been imposed prior to application for readmission, the Director, Accommodations & Title IX may deny readmission to the student. On denial of a student's readmission, the Director, Accommodations & Title IX will set a date when another application for readmission may again be made. A student may appeal denial of readmission or reregistration in accordance with the disciplinary appeal process (See Article VII, Section D. of the General Conduct Policy).
  - *Disciplinary Expulsion:* Disciplinary expulsion and a bar against readmission occurs when the student is permanently withdrawn and separated from MCC. The status of expulsion will be permanently shown on the student's academic record, including the transcript and/or student organization's registration. An administrative hold will be placed on the student's record by the Associate Director of Accommodations & Title IX to prevent future registration.
  - Withholding grades, official transcript, or degree;
  - Revocation of degree, denial of degree and/or withdrawal of diploma; and
  - Other sanction(s) as deemed appropriate under the circumstances.
- 2) A condition is defined as a secondary component of a disciplinary sanction. A condition is usually an educational or personal element assigned in conjunction with sanctions. Examples of conditions include, but are not limited to:
- Personal and/or academic counseling.
  - Discretionary educational conditions and/or programs of educational service to the College and/or community.
  - Restitution or compensation for loss, damage, or injury that may take the form of appropriate service and/or monetary or material replacement.

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- Monetary assessment owed to MCC.
  - Completion of an alcohol or drug education program.
- 3) A restriction is defined as a secondary component of a disciplinary sanction. A restriction usually occurs in conjunction with sanctions and will usually be time specific. Some examples of restrictions include, but are not limited to:
- Revocation of parking privileges.
  - Denial of eligibility for holding office in registered student organizations.
  - Denial of participation in extracurricular activities.
  - Prohibited access to MCC facilities and/or prohibited direct or indirect contact with members of the college community.
  - Loss of privileges on a temporary or permanent basis.
  - Withdrawal of college funding (Student Government Association, departmental, Student Services Fees, etc.).

### **B. Student Organization Sanctions**

The following are the common sanctions that may be imposed upon student organizations singly or in combination:

- Disciplinary suspension is a specific period of time in which a student organization's registration and privileges of the organization are suspended.
- Upon written request by the registered student organization's representative to the Director, Accommodations & Title IX, the notation of disciplinary suspension may be removed from the registration record of the student organization upon completion of the disciplinary suspension period.
- Notification of disciplinary suspension of an organization will indicate when the suspension begins and the earliest date the application for re-registration will be considered.
- The Director, Accommodations & Title IX may deny an organization's request for re-registration if the organization's misconduct during a period of suspension would have warranted additional disciplinary action.
- If the organization has failed to satisfy any sanction(s), condition(s), and/or restriction(s) that have been imposed prior to application for re-registration, the Director, Accommodations & Title IX may deny re-registration to the organization. On denial of an organization's application for re-registration, the Director, Accommodations & Title IX may set a date when another application for re-registration may be made.
- An organization may appeal denial of re-registration in accordance with the disciplinary appeal process (See Article VII, Section C of the General Conduct Policy).

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**C. Employee Sanctions/Responsive/Corrective Actions**

Responsive actions for an employee who has engaged in harassment, discrimination, and/or retaliation include:

- *Verbal or Written Warning*
- *Performance Improvement Plan/Management Process*
- *Enhanced Supervision, Observation, or Review*
- *Required Training or Education*
- *Probation*
- *Loss of Oversight or Supervisory Responsibility*
- *Demotion*
- *Transfer*
- *Reassignment*
- *Delay of (or referral for delay of) Tenure Track Progress*
- *Assignment to New Supervisor*
- *Suspension/Administrative Leave with Pay*
- *Termination*
- *Other Actions:* In addition to or in place of the above sanctions/responsive actions, MCC may assign any other responsive actions as deemed appropriate.

**XXXV. Withdrawal or Resignation Before Complaint Resolution**

**A. Students**

Should a Respondent decide not to participate in the Resolution Process, the process proceeds absent their participation to a reasonable resolution.

Should a student Respondent permanently withdraw or graduate from MCC, during the pendency of the resolution process, MCC will continue its process until a Decision-maker reaches a final determination on responsibility. The disciplinary process may be expedited as necessary to accommodate both the Respondent and Complainant's interest in a speedy resolution.

Regardless of whether the complaint is dismissed or pursued to completion of the Resolution Process, MCC will continue to address and remedy any systemic issues or concerns that may have contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, discrimination, and/or retaliation.

**B. Employees**

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Should an employee Respondent resign with unresolved allegations pending, the Resolution Process typically ends with dismissal, as MCC has lost primary disciplinary jurisdiction over the resigned employee. However, MCC may continue the Resolution Process when, at the discretion of the Title IX Coordinator, doing so may be necessary to address safety and/or remedy any ongoing effects of the alleged harassment, discrimination, and/or retaliation.

Regardless of whether the complaint is dismissed or pursued to completion of the Resolution Process, MCC will continue to address and remedy any systemic issues or concerns that contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, discrimination, and/or retaliation.

The employee who resigns with unresolved allegations pending is not eligible for academic admission or rehire, and the records retained by the Title IX Coordinator will reflect that status.

### **XXXVI. Appeals**

Any party may submit a written request for appeal (“Request for Appeal”) to the Title IX Coordinator within 5 business days of the delivery of the Notice of Outcome.

A single Appeal Decision-maker will Chair the appeal. No Appeal Decision-maker(s) will have been previously involved in the Resolution Process for the complaint, including in any dismissal appeal that may have been heard earlier in the process.

The Request for Appeal will be forwarded to the Appeal Chair or designee for consideration to determine if the request meets the grounds for appeal (a Review for Standing). This review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed.

#### **A. Grounds for Appeal**

Appeals are limited to the following grounds:

- 1) A procedural irregularity affected the outcome of the matter
- 2) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter
- 3) The Title IX Coordinator, Investigator(s), or Decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter

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If any of the grounds in the Request for Appeal do not meet the grounds in this Policy, that request will be denied by the Appeal Chair, and the parties and their Advisors will be notified in writing of the denial and the rationale.

If any of the grounds in the Request for Appeal meet the grounds in this Policy, then the Appeal Chair will notify all parties and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigator(s) and/or the original Decision-maker(s).

All other parties and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigator(s) and/or the original Decision-maker(s) will be mailed, emailed, and/or provided a hard copy of the Request for Appeal with the approved grounds and then be given 5 business days to submit a response to the portion of the appeal that was approved and involves them. All responses, if any, will be forwarded by the Appeal Chair to all parties for review and comment.

The non-appealing party (if any) may also choose to appeal at this time. If so, that will be reviewed to determine if it meets the grounds in this Policy by the Appeal Chair and either denied or approved. If approved, it will be forwarded to the party who initially requested an appeal, the Title IX Coordinator, and the Investigator(s) and/or original Decision-maker(s), as necessary, who will submit their responses, if any, within 5 business days. Any such responses will be circulated for review and comment by all parties. If not approved, the parties will be notified accordingly, in writing.

Neither party may submit any new requests for appeal after this time period. The Appeal Chair will collect any additional information needed and all documentation regarding the approved grounds for appeal, and the subsequent responses and the Chair will render a decision within no more than 5 business days, barring exigent circumstances. All decisions apply the preponderance of the evidence.

A Notice of Appeal Outcome will be sent to all parties simultaneously. The Notice of Appeal Outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanction(s) that may result which MCC is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent MCC is permitted to share under state or federal law.

Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official institutional records, or emailed to the parties'

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MCC-issued email or otherwise approved account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered.

### **B. Sanctions Status During the Appeal**

Any sanctions imposed as a result of the hearing are stayed (i.e.: not implemented) during the appeal process. Supportive measures may be reinstated, subject to the same supportive measure procedures above.

If any of the sanctions are to be implemented immediately post-hearing, but pre-appeal, then the emergency removal procedures (detailed above) for a show cause meeting on the justification for doing so must be permitted within 48 hours of implementation.

### **C. Appeal Considerations**

- Appeals are not intended to provide for a full re-hearing (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.
- Decisions on appeal are to be deferential to the original determination, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so.
- An appeal is not an opportunity for Appeal Decision-makers to substitute their judgment for that of the original Decision-maker(s) merely because they disagree with the finding and/or sanction(s).
- The Appeal Chair may consult with the Title IX Coordinator and/or legal counsel on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultation will be maintained.
- Appeals granted should normally be remanded (or partially remanded) to the original Investigator(s) and/or Decision-maker(s) for reconsideration.
- Once an appeal is decided, the outcome is final: further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new hearing).
  - When appeals result in no change to the finding or sanction, that decision is final.
  - When an appeal results in a new finding or sanction, that finding or sanction can be appealed one final time on the grounds listed above and in accordance with these procedures.
- In rare cases where an error cannot be cured by the original Investigator(s) and/or Decision-maker(s) or the Title IX Coordinator (as in cases of bias), the Appeal Chair may order a new investigation and/or a

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new hearing with new Investigators serving in the Investigator and Decision-maker roles.

- The results of a remand to a Decision-maker(s) cannot be appealed. The results of a new hearing can be appealed, once, on any of the three available appeal grounds.
- In cases that result in reinstatement to MCC or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

### **XXXVII. Long-Term Remedies/Other Actions**

Following the conclusion of the Resolution Process, and in addition to any sanctions implemented, the Title IX Coordinator may implement additional long-term remedies or actions with respect to the parties and/or the institutional community that are intended to stop the harassment, discrimination, and/or retaliation, remedy the effects, and prevent reoccurrence.

These remedies/actions may include, but are not limited to:

- Referral to counseling and health services
- Education to the individual and/or the community
- Permanent alteration of work arrangements for employees
- Provision of campus safety escorts
- Climate surveys
- Policy modification and/or training
- Provision of transportation assistance
- Implementation of long-term contact limitations between the parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Coordinator, certain long-term support or measures may also be provided to the parties even if no policy violation is found.

MCC will maintain the confidentiality of any long-term remedies/actions/measures, provided confidentiality does not impair MCC's ability to provide these services.

### **XXXVIII. Failure to Comply with Sanctions and/or Responsive Actions**

All Respondents are expected to comply with the assigned sanctions, responsive actions, and/or corrective actions within the timeframe specified by the final Decision-maker(s).

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s),

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including suspension, expulsion, and/or termination from MCC. Supervisors are expected to enforce completion of sanctions/responsive actions for their employees.

A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator.

### **XXXIX. Recordkeeping**

MCC will maintain for a period of at least seven years following the conclusion of the Resolution Process, records of:

- 1) Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under federal regulation
- 2) Any disciplinary sanctions imposed on the Respondent
- 3) Any remedies provided to the Complainant designed to restore or preserve equal access to MCC's education program or activity
- 4) Any appeal and the result therefrom
- 5) Any Informal Resolution and the result therefrom
- 6) All materials used to train Title IX Coordinators, Investigators, Decision-makers, and any person who facilitates an Informal Resolution process.
- 7) Any actions, including any supportive measures, taken in response to a report or Formal Complaint of sexual harassment, including:
  - a. The basis for all conclusions that the response was not deliberately indifferent
  - b. Any measures designed to restore or preserve equal access to MCC's education program or activity
  - c. If no supportive measures were provided to the Complainant, document the reasons why such a response was not clearly unreasonable in light of the known circumstances

MCC will also maintain any and all records in accordance with state and federal laws.

### **XL. Disability Accommodations in the Resolution Process**

MCC is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to MCC's Resolution Process.

Students needing such accommodations or support should contact Accommodations at 254-299-8122 or [disabilities@mclennan.edu](mailto:disabilities@mclennan.edu) and employees should contact Human Resources at 254-299-8611 or [hrstaff@mclennan.edu](mailto:hrstaff@mclennan.edu), who will review the request and, in consultation with the person requesting the accommodation and the Title IX

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Coordinator, determine which accommodations are appropriate and necessary for full participation in the process.

### **XLI. Revision of this Policy and Procedures**

This Policy and procedures supersede any previous policies addressing harassment, sexual misconduct, discrimination, and/or retaliation for incidents occurring on or after August 14, 2020, under Title IX and will be reviewed and updated annually by the Title IX Coordinator. MCC reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

During the Resolution Process, the Title IX Coordinator may make minor modifications to procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules.

If government laws or regulations change—or court decisions alter—the requirements in a way that impacts this document, this document will be construed to comply with the most recent government laws or regulations or court holdings.

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### Resolution Process B

#### Overview

McLennan Community College (MCC) will act on any formal or informal allegation or notice of violation of the Equal Opportunity, Harassment and Nondiscrimination Policy that is received by the Title IX Coordinator or a member of the administration, faculty, or other employee, with the exception of confidential resources, as articulated in the Policy above.

The procedures below apply to all allegations of harassment, discrimination, and/or retaliation on the basis of protected characteristic status involving students, staff, faculty members, or third parties. These procedures may also be used to address collateral misconduct arising from the investigation of or occurring in conjunction with harassing, discriminatory, or retaliatory conduct (e.g., vandalism, physical abuse of another). All other allegations of misconduct unrelated to incidents covered by this Policy will be addressed through the procedures elaborated in the applicable policies.

#### **I. Initial Assessment**

Following intake, receipt of notice, or a complaint of an alleged violation of MCC's nondiscrimination policy, the DHR Administrator<sup>11</sup> engages in an initial assessment, which is typically one to five (1-5) business days in duration. The steps in an initial assessment can include:

- The DHR Administrator reaches out to the Complainant to offer supportive measures.
- The DHR Administrator works with the Complainant to ensure they have an Advisor.
- The DHR Administrator works with the Complainant to determine which of three options to pursue: A Supportive Response, an Informal Resolution, or an Administrative Resolution.
  - If a Supportive Response is preferred, the DHR Administrator works with the Complainant to identify their wishes and then seeks to facilitate implementation. An Administrative Resolution process is not initiated, though the Complainant can elect to initiate it later, if desired.
  - If an Informal Resolution option is preferred, the DHR Administrator assesses whether the complaint is suitable for Informal Resolution, which informal mechanism may serve the situation best or is available, and may seek to determine if the Respondent is also willing to engage in Informal Resolution.

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<sup>11</sup> Anywhere Resolution Process B indicates "DHR Administrator," a designee may substitute depending on the allegations

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- If Administrative Resolution is preferred, the DHR Administrator initiates the investigation process and determines whether the scope of the investigation will address:
  - Incident
  - A potential pattern of misconduct
  - A culture/climate issue
- In some cases, the DHR Administrator may determine that a Violence Risk Assessment (VRA) should be conducted by a trained Campus Assessment Response & Evaluation (C.A.R.E.) Team member as part of the initial assessment. A VRA can aid in critical and/or required determinations, including:
  - 1) Emergency removal of a Respondent on the basis of immediate threat to an individual or the community's physical health/safety
  - 2) Whether the Title IX Coordinator should pursue/sign a Formal Complaint absent a willing/able Complainant
  - 3) Whether the scope of the investigation should include an incident, and/or pattern of misconduct, and/or climate of hostility/harassment
  - 4) To help identify potential predatory conduct
  - 5) Whether it is reasonable to try to resolve a complaint through Informal Resolution, and if so, what approach may be most successful
  - 6) Whether to permit a voluntary withdrawal by the Respondent
  - 7) Assessment of appropriate sanctions/remedies
  - 8) Whether a Clery Act Timely Warning/Trespass order/Persona-non-grata is needed

Based on the initial assessment, MCC will initiate one of these responses:

- **Supportive Response** – measures to help restore the Complainant's education access, as described in the Policy.
- **Informal Resolution** – typically used for less serious offenses and only when all parties agree to Informal Resolution, or when the Respondent is willing to accept responsibility for violating policy.
- **Administrative Resolution** – investigation of alleged policy violation(s) and recommended finding, subject to a determination by the DHR Administrator and the opportunity to appeal.

The investigation and the subsequent Administrative Resolution determine whether the Equal Opportunity, Harassment, and Nondiscrimination Policy has been violated. If so, MCC will promptly implement effective remedies designed to end the discrimination, prevent recurrence, and address the effects.

The process followed considers the preference of the parties but is ultimately determined at the discretion of the DHR Administrator. If at any point during the initial

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assessment or formal investigation the DHR Administrator determines that reasonable cause does not support the conclusion that policy has been violated, the process will end, and the parties will be notified.

The Complainant may request that the DHR Administrator review the reasonable cause determination and/or re-open the investigation. This decision lies in the sole discretion of the DHR Administrator, but the request is usually only granted in extraordinary circumstances.

### II. Resolution Process Pool

The Resolution Process relies on a pool of officials (“the Pool”) for implementation.

Members of the Pool are trained annually, and can serve in in the following roles, at the discretion of the DHR Administrator:

- To provide sensitive intake for and initial advice pertaining to the allegations
- To act as optional process Advisors to the parties
- To facilitate Informal Resolution
- To investigate allegations

The DHR Administrator, in consultation with the President, carefully vets Pool members for potential conflicts of interest or disqualifying biases and appoints the Pool, which acts with independence and impartiality.

Pool members receive annual training organized by the DHR Administrator, including a review MCC policies and procedures as well as applicable federal and state laws and regulations so that they are able to appropriately address allegations, provide accurate information to members of the community, protect safety, and promote accountability.

The Pool members receive annual training specific to their role. This training includes, but is not limited to:

- The scope of MCC’s Equal Opportunity, Harassment, and Nondiscrimination Policy and Procedures
- How to conduct investigations that protect the safety of Complainants and Respondents and promote accountability
- Implicit bias
- Disparate treatment
- Reporting, confidentiality, and privacy requirements
- Applicable laws, regulations, and federal regulatory guidance

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- How to implement appropriate and situation-specific remedies
- How to investigate in a thorough, reliable, timely, and impartial manner
- How to conduct a sexual harassment investigation
- Trauma-informed practices pertaining to investigations and Resolution Processes
- How to uphold fairness, equity, and due process
- How to weigh evidence
- How to conduct questioning
- How to assess credibility
- Impartiality and objectivity
- Types of evidence
- Deliberation
- How to render findings and generate clear, concise, evidence-based rationales
- The definitions of all offenses
- How to apply definitions used by the institution with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with Policy
- How to conduct an investigation and grievance process
- How to serve impartially by avoiding prejudgment of the facts at issue, conflicts of interest, and bias against Respondents and/or for Complainants, and on the basis of sex, race, religion, and other protected characteristics
- Any technology to be used
- Issues of relevance of questions and evidence
- Issues of relevance to create an investigation report that fairly summarizes relevant evidence
- How to determine appropriate sanctions in reference to all forms of harassment and discrimination allegations

### III. **Counterclaims**

Counterclaims by the Respondent may be made in good faith or may instead be motivated by a retaliatory intent. MCC is obligated to ensure that any process is not abused for retaliatory purposes.

MCC permits the filing of counterclaims, but uses the initial assessment, described above, to assess whether the allegations are made in good faith. If they are, the allegations will be processed using the resolution procedures below, typically after resolution of the underlying allegation. Counterclaims made with retaliatory intent will not be permitted.

A delay in the processing of counterclaims is permitted, accordingly. Occasionally, allegations and counterclaims can be resolved through the same investigation, at the discretion of the DHR Administrator. When counterclaims are not made in good faith, they will be considered retaliatory, and may constitute a violation of this Policy.

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**IV. Advisors**

**A. Advisor Expectations**

MCC generally expects an Advisor to adjust their schedule to allow them to attend MCC meetings when planned, but MCC may change scheduled meetings to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay.

MCC may also make reasonable provisions to allow an Advisor who cannot attend in person to attend a meeting by telephone, video conferencing, or other similar technologies as may be convenient and available.

Parties whose Advisors are disruptive or who do not abide by MCC policies and procedures may face the loss of that Advisor and/or possible Policy violations.

Advisors are expected to consult with their advisees without disrupting MCC meetings or interviews. Advisors do not represent parties in the process; their role is only to advise.

**B. Expectations of the Parties with Respect to Advisors**

Each party may choose an Advisor<sup>12</sup> who is eligible and available<sup>13</sup> to accompany them throughout the process. The Advisor can be anyone, including an attorney, but should not be someone who is also a witness in the process. A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout.

The parties are expected to inform the Investigators of the identity of their Advisor at least two (2) business days before the date of their first meeting with the Investigator(s) (or as soon as possible if a more expeditious meeting is necessary or desired).

The parties are expected to provide timely notice to the Investigator(s) and/or the DHR Administrator if they change Advisors at any time.

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<sup>12</sup> This could include an attorney, advocate, or support person. Witnesses are not entitled to Advisors within the process, though they can be advised externally. If MCC allows more than one Advisor for one party, they should do so for all parties.

<sup>13</sup> "Available" means the party cannot insist on an Advisor who simply doesn't have inclination, time, or availability. Also, the Advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must implement and monitor sanctions.

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Upon written request of a party, MCC will copy the Advisor on all communications between MCC and the party. The Advisor may be asked to sign a non-disclosure agreement (NDA) regarding private, sensitive records.

At the discretion of the DHR Administrator, more than one Advisor may be permitted to the parties, upon request. For equity purposes, if one party is allowed another Advisor, the other party must be allowed one to as well.

### **C. Assistance in Securing an Advisor**

For representation, Respondents may wish to contact organizations such as:

- Families Advocating for Campus Equality (<http://www.facecampusequality.org>)
- Stop Abusive and Violent Environments (<http://www.saveservices.org>)

Complainants may wish to contact organizations such as:

- The Victim Rights Law Center (<http://www.victimrights.org>)
- The National Center for Victims of Crime (<http://www.victimsofcrime.org>), which maintains the Crime Victim's Bar Association
- The Time's Up Legal Defense Fund (<https://nwlc.org/times-up-legal-defense-fund/>)

### **V. Resolution Options**

Proceedings are private. All persons present at any time during the Resolution Process are expected to maintain the privacy of the proceedings in accord with MCC Policy.

While there is an expectation of privacy around what is discussed during interviews, the parties have discretion to share their own experiences with others if they so choose but are encouraged to discuss with their Advisors first before doing so.

#### **A. Informal Resolution**

Informal Resolution is applicable when the parties voluntarily agree to resolve the matter through Alternative Resolution (mediation, restorative practices, facilitated dialogue, etc.), when the Respondent accepts responsibility for violating Policy, or when the DHR Administrator can resolve the matter informally by providing remedies to resolve the situation. The DHR Administrator has discretion to determine if an investigation will be paused during Informal Resolution, or if it will be limited, or will continue during the Informal Resolution process.

It is not necessary to pursue Informal Resolution first in order to pursue Administrative Resolution, and any party participating in Informal Resolution can

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stop the process at any time and request the Administrative Resolution process. Further, if an Informal Resolution fails after the resolution is finalized, Administrative Resolution may be pursued.

### **i. Alternative Resolution**

Alternative Resolution is an informal process, such as mediation or restorative practices, by which the parties mutually agree to resolve an allegation. It may be used for less serious, yet inappropriate, behaviors and is encouraged as an alternative to the Administrative Resolution process (described below) to resolve conflicts, as appropriate. The parties must consent to the use of Alternative Resolution.

The DHR Administrator determines if Alternative Resolution is appropriate, based on the willingness of the parties, the nature of the conduct at issue, and the susceptibility of the conduct to Alternative Resolution.

In an Alternative Resolution, a trained administrator or third party facilitates communication among with the parties to an effective resolution, if possible. Institutionally imposed sanctions are not possible as the result of an Alternative Resolution process, though the parties may agree to accept sanctions and/or appropriate remedies.

The DHR Administrator maintains records of any resolution that is reached, and failure to abide by the resolution can result in appropriate enforcement actions.

Alternative Resolution is not typically the primary resolution mechanism used to address reports of violent behavior of any kind or in other cases of serious violations of policy, though similarly structured conversations may be made available after the Administrative Resolution process is completed should the parties and the DHR Administrator believe it could be beneficial. The results of Alternative Resolution are not appealable.

### **ii. Respondent Accepts Responsibility for Alleged Violations**

The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the Resolution Process. If the Respondent accepts responsibility, the DHR Administrator determines that the individual is in violation of MCC policy.

The DHR Administrator then determines appropriate sanction(s) or responsive actions, which are promptly implemented in order to effectively

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stop the harassment, discrimination, and/or retaliation; prevent its recurrence; and remedy the effects of the conduct, both on the Complainant and the community.

If the Respondent accepts responsibility for all of the alleged policy violations and the DHR Administrator has determined appropriate sanction(s) or responsive actions, to which the Respondent agrees, and which are promptly implemented, the process is over. The Complainant will be informed of this outcome.

If the Respondent accepts responsibility for some of the alleged policy violations and DHR Administrator has determined appropriate sanction(s) or responsive actions, to which the Respondent agrees, and which are promptly implemented for those violations, then the remaining allegations will continue to be investigated and resolved through Administrative Resolution. The parties will be informed of this outcome. The parties are still able to seek Alternative Resolution on the remaining allegations, subject to the stipulations above.

### **B. Administrative Resolution via an Investigation**

Administrative Resolution can be pursued at any time during the process for any behavior for which the Respondent has not accepted responsibility that would constitute conduct covered by the Equal Opportunity, Harassment, and Nondiscrimination Policy if proven. Administrative Resolution starts with a thorough, reliable, and impartial investigation.

If Administrative Resolution is initiated, the DHR Administrator will provide written notification of the investigation to the parties at an appropriate time during the investigation. Typically, notice is given at least two (2) business days in advance of an interview. Advanced notice facilitates the parties' ability to identify and choose an Advisor, if any, to accompany them to the interview.

Notification will include a meaningful summary of the allegations, will be made in writing, and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official MCC records, or emailed to the parties' MCC-issued or designated email account.

Once mailed, emailed, and/or received in-person, notice will be presumptively delivered. The notification will include the policies allegedly violated, if known at

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the time. Alternatively, the policies allegedly violated can be provided at a later date, in writing, as the investigation progresses, and details become clearer.

MCC aims to complete all investigations within a sixty (60) business-day time period, which can be extended as necessary for appropriate cause by DHR Administrator, with notice to the parties as appropriate. Investigations can take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc.

Once the decision is made to commence an investigation, DHR Administrator appoints investigators to conduct the, usually within two (2) business days of determining that an investigation should proceed.

The DHR Administrator will vet the assigned Investigator(s) to ensure impartiality by ensuring there are no conflicts of interest or disqualifying bias.

The parties may, at any time during the Resolution Process, raise a concern regarding bias or conflict of interest, and the DHR Administrator will determine whether the concern is reasonable and supportable. If so, another Investigator will be assigned and the impact of the bias or conflict, if any, will be remedied. If the bias or conflict relates to the DHR Administrator, concerns should be raised with the College President.

MCC will make a good faith effort to complete the investigation as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation.

MCC may undertake a short delay in its investigation (several days to weeks, to allow evidence collection) when criminal charges based on the same behaviors that invoke MCC's Resolution Process are being investigated by law enforcement. MCC will promptly resume its investigation and Resolution Process once notified by law enforcement that the initial evidence collection process is complete.

MCC action(s) are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

Investigations involve interviews with all relevant parties and witnesses, obtaining available, relevant evidence, and identifying sources of expert information, as necessary.

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All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence, and to fully review and respond to all evidence on the record.

### VI. Investigation

The Investigators typically take the following steps, if not already completed (not necessarily in this order):

- Determine the identity and contact information of the Complainant
- In coordination with institutional partners (e.g., the DHR Administrator), initiate or assist with any necessary supportive measures
- Identify all policies implicated by the alleged misconduct
- Assist the DHR Administrator with conducting an initial assessment to determine if there is reasonable cause to believe the Respondent has violated policy
- If there is insufficient evidence to support reasonable cause, the process is closed with no further action
- Commence a thorough, reliable, and impartial investigation by developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for all parties and witnesses
- Meet with the Complainant to finalize their statement, if necessary
- Prepare the initial Notice of Investigation and Allegations (NOIA) on the basis of the initial assessment. Notice may be one step or multiple steps, depending on how the investigation unfolds, and potential policy violations may be added or dropped as more is learned. Investigators will update the NOIA accordingly and provide it to the parties.
- Notice should inform the parties of their right to have the assistance of a trained Investigator as a process Advisor appointed by MCC or an Advisor of their choosing present for all meetings attended by the advisee
- When formal notice is given, it should provide the parties with a written description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result
- Give an instruction to the parties to preserve any evidence that is directly related to the allegations
- Provide the parties and witnesses with an opportunity to review and verify the Investigator's summary notes from interviews and meetings with that specific party or witness
- Make good faith efforts to notify each party of any meeting or interview involving another party, in advance when possible
- Interview all relevant individuals and conduct follow-up interviews as necessary

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- Allow each party the opportunity to suggest questions they wish for the Investigator(s) to ask the other party and witnesses
- Complete the investigation promptly and without unreasonable deviation from the intended timeline
- Provide regular status updates to the parties throughout the investigation
- Prior to the conclusion of the investigation, summarize for the parties the list of witnesses whose information will be used to render a finding
- Write a comprehensive investigation report fully summarizing the investigation and all evidence
- Provide the parties with a copy of the draft investigation report when it is completed, including all relevant evidence, analysis, credibility assessments, and recommended finding(s)
- Provide each party with a full and fair opportunity to respond to the report in writing within 5 business days and incorporate that response, if any, into the report
- Investigators may choose to respond in writing in the report to the responses of the parties, and/or to share the responses between the parties for their responses, while also ensuring that they do not create a never-ending feedback loop
- Share the report with the DHR Administrator or legal counsel for review and feedback as needed
- Provide the final report to the DHR Administrator with one of two options:
  - A recommended determination, based on a preponderance of the evidence, whether a policy violation is more likely than not to have occurred, OR
  - Gather, assess, and synthesize evidence without making a finding, conclusion, determination, or recommendation.

### **VII. Determination**

Within two to three (2-3) business days of receiving the Investigator's recommendation, the DHR Administrator reviews the report and all responses, and then makes the final determination on the basis of the preponderance of the evidence.

If the record is incomplete, the DHR Administrator may direct a re-opening of the investigation, or may direct or conduct any additional inquiry necessary, including informally meeting with the parties or any witnesses, if needed.

The investigation recommendation, if any, should be strongly considered but is not binding on the DHR Administrator. The DHR Administrator may invite and consider impact and/or mitigation statements from the parties if and when determining appropriate sanction(s), if any.

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**VIII. Additional Details of the Investigation Process**

**A. Witness Responsibilities**

Witnesses (as distinguished from the parties) who are MCC faculty or staff are expected to cooperate with and participate in MCC's investigation and Resolution Process. Failure of a witness to cooperate with and/or participate in the investigation or Resolution Process constitutes a violation of Policy and may be subject to discipline.

**B. Remote Processes**

Parties and witnesses may be interviewed remotely by phone, video conferencing, or similar technologies if the Investigator(s) and/or Decision-maker determine that timeliness, efficiency, or other causes dictate a need for remote interviewing. Witnesses may also provide written statements in lieu of interviews, or respond to questions in writing, if deemed appropriate by the Investigator(s), though this approach is not ideal. When remote technologies are used, MCC makes reasonable efforts to ensure privacy and ensures that any technology does not work to the detriment of any party or subject them to unfairness.

**C. Recording**

No unauthorized audio or video recording of any kind is permitted during the Resolution Process including investigation interviews. If Investigator(s) elect to audio and/or video record interviews, all involved parties must be made aware of audio and/or video recording.

**D. Evidence**

Any evidence that is relevant and credible may be considered, including an individual's prior misconduct history as well as evidence indicating a pattern of misconduct, subject to the limitation in (E) below. The process should exclude irrelevant or immaterial evidence and may disregard evidence lacking in credibility or that is improperly prejudicial.

**E. Prior Sexual History/Patterns**

Unless the DHR Administrator determines it is appropriate, the investigation and the finding do not consider: (1) incidents not directly related to the possible violation(s), unless they evidence a pattern; (2) the irrelevant sexual history of the parties (though there may be a limited exception made with regard to the sexual history between the parties); (3) irrelevant character evidence.

**F. Previous Allegations/Violations**

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While previous conduct violations by the Respondent are not generally admissible as information supporting the current allegation, the Investigator(s) may supply the DHR Administrator with information about previous good faith allegations and/or findings, when that information suggests potential pattern and/or predatory conduct.

If MCC uses a progressive discipline system, previous disciplinary action of any kind involving the Respondent may be considered in determining the appropriate sanction(s).

Character witnesses or evidence may be offered. The investigation and hearing will determine if the character evidence is relevant. If so, it may be considered. If not, it will be excluded.

### **G. Notification of Outcome**

If the Respondent admits to the violation(s), or is found in violation, the DHR Administrator, in consultation with other administrators as appropriate, determines sanction(s) and/or responsive actions, which are promptly implemented in order to effectively to stop the harassment, discrimination, and/or retaliation; prevent its recurrence; and remedy the effects of the discriminatory conduct, both on the Complainant and the community.

The DHR Administrator informs the parties of the determination within two to three (2-3) business days of the resolution, ideally simultaneously, but without significant time delay between notifications. Notifications are made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official MCC records, or emailed to the parties' MCC-issued or designated email account. Once mailed, emailed, and/or received in-person, notice is presumptively delivered.

The Notification of Outcome specifies the finding for each alleged policy violation, any sanction(s) that may result which MCC is permitted to share pursuant to state or federal law, and the rationale supporting the findings to the extent MCC is permitted to share under state or federal law.

The notice will detail when the determination is considered final and will detail any changes that are made prior to finalization.

Unless based on an acceptance of violation by the Respondent, the determination may be appealed by either party. The Notification of Outcome also

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includes the grounds on which the parties may appeal and the steps the parties may take to request an appeal of the findings. More information about the appeal procedures can be found in [Section XI](#).

### IX. **Sanctions**

Factors considered when determining any sanction(s)/responsive action(s) may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- An individual's disciplinary history
- Previous allegations or allegations involving similar conduct
- The need for sanctions/responsive actions to bring an end to the discrimination, harassment, and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment, and/or retaliation
- The need to remedy the effects of the discrimination, harassment, and/or retaliation on the Complainant and the community
- The impact on the parties
- Any other information deemed relevant by the DHR Administrator

The sanction(s) will be implemented as soon as is feasible. The sanctions described in this Policy are not exclusive of, and may be in addition to, other actions taken, or sanctions imposed by outside authorities.

#### **A. Student Sanctions**

The following are the common sanctions<sup>14</sup> that may be imposed upon students singly or in combination:

- 1) Disciplinary Sanctions are defined as the primary outcome of the alleged violation. If found responsible, the range of sanctions include the following outcomes:
  - *Disciplinary Reprimand*: The disciplinary reprimand is an official written notification using the notification procedure outlined in Article VII Section E. of the General Conduct Policy, to the student that the action in question was misconduct;
  - *Disciplinary Probation*: Disciplinary probation is a period of time during which a student's conduct will be observed and reviewed. The student must demonstrate the ability to comply with college policies, rules, and/or standards and any other requirement stipulated for the probationary period.

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<sup>14</sup> MCC policies on transcript notation will apply to these proceedings.

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- *Deferred Disciplinary Suspension:* Deferred disciplinary Suspension is a period of time where a disciplinary suspension may be deferred for a period of observation and review, but in no case will the deferred suspension be less than the remainder of the semester.
  - *Disciplinary Suspension:* Disciplinary suspension is a specific period of time in which a student may not participate in classes or college-related activities. Notification of disciplinary suspension will indicate the date suspension begins and the earliest date the application for student readmission will be considered. A registration hold will be placed on the student's account in order to prevent returning to classes during this period. The Director, Accommodations & Title IX may deny a student's readmission, if the student's misconduct during the suspension would have warranted additional disciplinary action. If the student has failed to satisfy any sanctions, conditions and/or restrictions that have been imposed prior to application for readmission, the Director, Accommodations & Title IX may deny readmission to the student. On denial of a student's readmission, the Director, Accommodations & Title IX will set a date when another application for readmission may again be made. A student may appeal denial of readmission or reregistration in accordance with the disciplinary appeal process (See Article VII, Section D. of the General Conduct Policy).
  - *Disciplinary Expulsion:* Disciplinary expulsion and a bar against readmission occurs when the student is permanently withdrawn and separated from MCC. The status of expulsion will be permanently shown on the student's academic record, including the transcript and/or student organization's registration. An administrative hold will be placed on the student's record by the Associate Director of Accommodations & Title IX to prevent future registration.
  - Withholding grades, official transcript, or degree;
  - Revocation of degree, denial of degree and/or withdrawal of diploma; and
  - Other sanction(s) as deemed appropriate under the circumstances.
- 2) A condition is defined as a secondary component of a disciplinary sanction. A condition is usually an educational or personal element assigned in conjunction with sanctions. Examples of conditions include, but are not limited to:
- Personal and/or academic counseling.
  - Discretionary educational conditions and/or programs of educational service to the College and/or community.
  - Restitution or compensation for loss, damage, or injury that may

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take the form of appropriate service and/or monetary or material replacement.

- Monetary assessment owed to MCC.
- Completion of an alcohol or drug education program.

3) A restriction is defined as a secondary component of a disciplinary sanction. A restriction usually occurs in conjunction with sanctions and will usually be time specific. Some examples of restrictions include, but are not limited to:

- Revocation of parking privileges.
- Denial of eligibility for holding office in registered student organizations.
- Denial of participation in extracurricular activities.
- Prohibited access to MCC facilities and/or prohibited direct or indirect contact with members of the college community.
- Loss of privileges on a temporary or permanent basis.
- Withdrawal of college funding (Student Government Association, departmental, Student Services Fees, etc.).

### **B. Student Organization Sanctions**

Student organizations may also be subject to suspension of their organization's registration.

- Disciplinary suspension is a specific period of time in which a student organization's registration and privileges of the organization are suspended.
- Upon written request by the registered student organization's representative to the Director, Accommodations & Title IX, the notation of disciplinary suspension may be removed from the registration record of the student organization upon completion of the disciplinary suspension period.
- Notification of disciplinary suspension of an organization will indicate when the suspension begins and the earliest date the application for re-registration will be considered.
- The Director, Accommodations & Title IX may deny an organization's request for re-registration if the organization's misconduct during a period of suspension would have warranted additional disciplinary action.
- If the organization has failed to satisfy any sanction(s), condition(s), and/or restriction(s) that have been imposed prior to application for re-registration, the Director, Accommodations & Title IX may deny re-registration to the organization. On denial of an organization's application for re-registration, the Director, Accommodations & Title IX may set a date when another application for re-registration may be made.

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- An organization may appeal denial of re-registration in accordance with the disciplinary appeal process (See Article VII, Section C of the General Conduct Policy).

### **C. Employee Sanctions/Responsive/Corrective Actions**

Responsive actions for an employee who has engaged in harassment, discrimination, and/or retaliation include:

- *Verbal or Written Warning*
- *Performance Improvement Plan/Management Process*
- *Enhanced Supervision, Observation, or Review*
- *Required Counseling*
- *Required Training or Education*
- *Probation*
- *Denial of Pay Increase/Pay Grade*
- *Loss of Oversight or Supervisory Responsibility*
- *Demotion*
- *Transfer*
- *Reassignment*
- *Delay of Tenure Track Progress*
- *Assignment to New Supervisor*
- *Restriction of Stipends, Research, and/or Professional Development Resources*
- *Suspension with Pay*
- *Suspension without Pay*
- *Termination*
- *Other Actions:* In addition to or in place of the above sanctions/responsive actions, MCC may assign any other responsive actions as deemed appropriate.

### **X. Withdrawal or Resignation while Charges are Pending**

#### **A. Students**

Should a Respondent decide not to participate in the Resolution Process, the process proceeds absent their participation to a reasonable resolution.

Should a student Respondent permanently withdraw or graduate from MCC, during the pendency of the resolution process, MCC will continue its process until a Decision-maker reaches a final determination on responsibility.

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The Respondent will not be allowed to reenroll until meeting with the DHR Administrator to review the allegations and resolution if one was determined.

### **B. Employees**

Should an employee resign with unresolved allegations pending, the records of the DHR Administrator will reflect that status.

## **XI. Appeals**

All requests for appeal consideration must be submitted in writing to the DHR Administrator within 5 business days of the delivery of the written finding of the DHR Administrator.

A three-member Appeal Panel chosen from the Pool will be designated by the DHR Administrator from those who have not previously been involved in the process. One member of the Appeal Panel will be designated as the Chair. Any party may appeal, but appeals are limited to the following grounds:

- 1) A procedural error or omission occurred that significantly impacted the outcome (e.g., substantiated bias, material deviation from established procedures, failure to correctly apply the evidentiary standard).
- 2) To consider new evidence, unknown or unavailable during the investigation, that could substantially impact the original finding or sanction. A summary of this new evidence and its potential impact must be included in the appeal.
- 3) The sanctions imposed fall outside the range of sanctions the Recipient has designated for the violation(s) and the cumulative disciplinary record of the Respondent.

When any party requests an appeal, the DHR Administrator will share the appeal request with all other parties or other appropriate persons such as the Investigator(s), who may file a response within three (3) business days. Another party may also bring their own appeal on separate grounds.

If new grounds are raised, the original appealing party will be permitted to submit a written response to these new grounds within 5 business days. These responses or appeal requests will be shared with each party. The President or designee will review the appeal request(s) within 5 business days of completing the pre-appeal exchange of materials. If grounds are not sufficient for an appeal, or the appeal is not timely, the President or designee dismisses the appeal.

When the President or designee finds that at least one of the grounds is met by at least one party, additional principles governing the review of appeals include the following:

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- Decisions by the President or designee are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is compelling justification to do so.
- Appeals are not intended to be full re-hearings (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the investigation and pertinent documentation regarding the grounds for appeal.
- An appeal is not an opportunity for the President or designee to substitute their judgment for that of the original Investigator(s) or DHR Administrator merely because they disagree with the finding and/or sanction(s).
- Appeals granted based on new evidence should normally be remanded to the Investigator(s) for reconsideration. Other appeals should be remanded at the discretion of the President or designee.
- Sanctions imposed as the result of the Administrative Resolution are implemented immediately unless the DHR Administrator stays their implementation in extraordinary circumstances, pending the outcome of the appeal.
  - For students: Graduation, study abroad, internships/externships, etc., do NOT in and of themselves constitute exigent circumstances, and students may not be able to participate in those activities during their appeal.
- All parties will be informed in writing within 5 business days of the outcome of the appeal without significant time delay between notifications, and in accordance with the standards for Notice of Outcome as defined above.
- Once an appeal is decided, the outcome is final; further appeals are not permitted, even if a decision or sanction is changed on remand. When appeals result in no change to the finding or sanction, that decision is final. When an appeal results in a new finding or sanction, that finding or sanction can be appealed one final time on the grounds listed above, and in accordance with these procedures.
- In rare cases when a procedural error cannot be cured by the original Investigator(s) and/or Decision-maker or the DHR Administrator (as in cases of bias), the President or designee may recommend a new investigation and/or Administrative Resolution process, including a new Decision-maker.
- The results of a new Administrative Resolution process can be appealed once, on any of the three applicable grounds for appeals.
- In cases in which the appeal results in Respondent's reinstatement to MCC or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable.

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### **XII. Long-Term Remedies/Actions**

Following the conclusion of the Resolution Process, and in addition to any sanctions implemented, the DHR Administrator may implement long-term remedies or actions with respect to the parties and/or the campus community to stop the harassment, discrimination, and/or retaliation; remedy its effects; and prevent its reoccurrence. These remedies/actions may include, but are not limited to:

- Referral to counseling and health services
- Referral to the Employee Assistance Program
- Education to the community
- Permanent alteration of housing assignments
- Permanent alteration of work arrangements for employees
- Provision of campus safety escorts
- Climate surveys
- Policy modification
- Provision of transportation assistance
- Implementation of long-term contact limitations between the parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the DHR Administrator, long-term remedies may also be provided to the Complainant even if no policy violation is found.

When no policy violation is found, the DHR Administrator will address any remedial requirements owed by MCC to the Respondent.

### **XIII. Failure to Complete Sanctions/Comply with Interim and Long-Term Remedies/Responsive Actions**

All Respondents are expected to comply with conduct sanctions, responsive actions, and corrective actions within the timeframe specified by the DHR Administrator. Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s) and responsive/corrective action(s), including suspension, expulsion, and/or termination from MCC and may be noted on a student's official transcript. Supervisors are expected to enforce completion of sanctions/responsive actions for their employees. A suspension will only be lifted when compliance is achieved to the satisfaction of the DHR Administrator.

### **XIV. Recordkeeping**

In implementing this Policy, records of all allegations, investigations, resolutions, and hearings will be kept by the DHR Administrator in the complaint database indefinitely, or as required by state or federal law or institutional policy.

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**XV. Statement of the Rights of the Parties (See Appendix B)**

**XVI. Disability Accommodation in the Resolution Process**

MCC is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to the MCC's Resolution Process. Any students needing such accommodations or support should contact the Disability Services and employees should contact Human Resources, who will review the request and, in consultation with the person requesting the accommodation and the DHR Administrator, determine which accommodations are appropriate and necessary for full participation in the process.

**XVII. Revision**

These policies and procedures will be reviewed and updated annually by the Title IX Coordinator and DHR Administrator. MCC reserves the right to make changes to this document as necessary and once those changes are posted online, they are in effect.

The Title IX Coordinator and DHR Administrator may make minor modifications to these procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules.

The Title IX Coordinator and DHR Administrator may also vary procedures materially with notice (on the MCC website, with the appropriate effective date identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in this policy and procedure.

Procedures in effect at the time of the resolution will apply to resolution of incidents, regardless of when the incident occurred.

Policy in effect at the time of the offense will apply even if the policy is changed subsequently but prior to resolution unless the parties consent to be bound by the current policy.

If government regulations change in a way that impacts this document, this document will be construed to comply with the most recent government regulations.

This document does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such policies and codes, generally.

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### Appendix A. Glossary of Terms

- **Advisor** means a person chosen by a party or appointed by the institution to accompany the party to meetings related to the Resolution Process, to advise the party on that process, and to conduct questioning for the party at the hearing, if any.
- **Appeal Decision-maker** means the person or panel who accepts or rejects a submitted appeal request, determines whether an error occurred that substantially affected the investigation or original determination, and directs corrective action, accordingly.
- **Complainant** means an individual who is alleged to be the victim of conduct that could constitute harassment or discrimination based on a protected characteristic, or retaliation for engaging in a protected activity.
- **Confidential Resource** means an employee who is not a Mandated Reporter of notice of harassment, discrimination, and/or retaliation (irrespective of Clery Act Campus Security Authority status).<sup>15</sup>
- **Decision-maker** means the person or panel who hears evidence, determines relevance, and makes the Final Determination of whether this Policy has been violated and/or assigns sanctions.
- **Directly Related Evidence** is evidence connected to the complaint, but which is neither inculpatory (tending to prove a violation) nor exculpatory (tending to disprove a violation) and cannot be relied upon by the Decision-maker(s). Compare to Relevant Evidence, below.
- **Education Program or Activity** means locations, events, or circumstances where MCC exercises substantial control over both the Respondent and the context in which the harassment, discrimination, and/or retaliation occurs and also includes any building owned or controlled by a student organization that is officially recognized by the MCC.
- **Final Determination** is a conclusion by the standard of proof that the alleged conduct did or did not violate policy.
- **Finding** is a conclusion by the standard of proof that the conduct did or did not occur as alleged (as in a “finding of fact”).
- **Formal Complaint** means a document submitted or signed by a Complainant or signed by the Title IX Coordinator or DHR Administrator alleging a Respondent engaged in harassment or discrimination based on a protected characteristic or retaliation for engaging in a protected activity and requesting that MCC investigate the allegation(s). Formal Complaints must be received in a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the recipient) that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint.

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<sup>15</sup> See TX Educ. Code Chapter 51, Subchapter E-2, Sect. 51.252(c).

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- **Formal Grievance Process** means “Process A,” a method of formal resolution designated by MCC to address conduct that falls within the policies included below, and which complies with the requirements of the Title IX regulations (34 C.F.R. § 106.45) and the Violence Against Women Act § 304.
- **Grievance Process Pool** includes any Investigators, Hearing Decision-makers, Appeal Decision-makers, and Advisors who may perform any or all of these roles (though not at the same time or with respect to the same complaint).
- **Informal Resolution** a complaint resolution agreed to by the Parties and approved by the Title IX Coordinator or DHR Administrator that occurs prior to a formal Final Determination being reached.
- **Investigator** means the person(s) authorized by MCC to gather facts about an alleged violation of this Policy, assess relevance and credibility, synthesize the evidence, and compile this information into an investigation report of Relevant Evidence and a file of Directly Related Evidence.
- **Mandated Reporter (Responsible Employee)** means a Recipient employee who is obligated by policy to share knowledge, notice, and/or reports of harassment, discrimination, and/or retaliation with the Title IX Coordinator and/or their supervisor.
- **Notice** means that an employee, student, or third party informs the Title IX Coordinator or other Official with Authority of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct.
- **Official with Authority (OWA)** means a Recipient employee who has responsibility to implement corrective measures for harassment, discrimination, and/or retaliation on behalf of the Recipient.
- **Parties** means the Complainant(s) and Respondent(s), collectively.
- **Process A** means the Formal Grievance Process detailed in the section titled “Resolution Process A”
- **Process B** means the administrative resolution procedures detailed in the section titled “Resolution Process B” apply when Process A does not, as determined by the Title IX Coordinator.
- **Relevant Evidence** is evidence that tends to prove (inculpatory) or disprove (exculpatory) an issue in the complaint.
- **Remedies** are post-Final Determination actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to the Recipient’s education program.
- **Respondent** means an individual who has been reported to be the perpetrator of conduct that could constitute harassment or discrimination based on a protected characteristic, or retaliation for engaging in a protected activity under this Policy.
- **Responsible Employee (Mandated Reporter)** means a Recipient employee who is obligated by policy to share knowledge, notice, and/or reports of harassment, discrimination, and/or retaliation with the Title IX Coordinator and/or their supervisor.

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- **Resolution** means the result of an Informal Resolution or Formal Grievance Process.
- **Sanction** means a consequence imposed on a Respondent who is found to have violated this Policy.
- **Sexual Harassment** is an umbrella category including the offenses of sexual harassment, sexual assault, stalking, dating violence, and domestic violence.
- **Student** means any individual who has accepted an offer of admission, or who is registered or enrolled for credit or non-credit bearing coursework, and who maintains an ongoing educational relationship with the Recipient.
- **Title IX Coordinator** is at least one official designated by MCC to ensure compliance with Title IX and MCC's Title IX program. References to the Coordinator throughout this policy may also encompass a designee of the Coordinator for specific tasks.
- **Title IX Team** refers to the Title IX Coordinator, any deputy coordinators, and any member of the Grievance Process Pool.

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### Appendix B. Rights of the Parties

Parties associated with this Discrimination, Harassment, and Retaliation Resolution Process have:

- The right to investigation and appropriate resolution of all credible allegations of discrimination made in good faith to McLennan Community College administrators;
- The right to timely written notice of all alleged violations, including the identity of the parties involved (if known), the precise misconduct being alleged, the date and location of the alleged misconduct (if known), the implicated policies and procedures, and possible sanctions;
- The right to timely written notice of any material adjustments to the allegations (e.g., additional incidents or allegations, additional Complainants, unsubstantiated allegations) and any attendant adjustments needed to clarify potentially implicated policy violations;
- The right to be informed in advance of any public release of information regarding the incident;
- The right not to have any personally identifiable information released to the public, without their consent;
- The right to be treated with respect by McLennan Community College officials;
- The right to have McLennan Community College policies and procedures followed without material deviation;
- The right not to be pressured to mediate or otherwise informally resolve any reported misconduct involving violence;
- The right not to be discouraged by McLennan Community College officials from reporting discrimination (to include sexual misconduct) to both on-campus and off-campus authorities;
- The right to be informed by McLennan Community College officials of options to notify proper law enforcement authorities, including on-campus and local police, and the option to be assisted by campus employees in notifying such authorities, if the Complainant so chooses. This also includes the right not to be pressured to report;
- The right to have reports of discrimination responded to promptly and with sensitivity by campus law enforcement and other campus officials;
- The right to have allegations of violations of the Policy responded to promptly and with sensitivity by McLennan Community College Police Department and other College officials.
- The right to be notified of available counseling, mental health, victim advocacy, health, student financial aid, visa and immigration assistance or other student services or employee resources, both on campus and in the community;
- The right to request a campus no contact order (or a trespass order against a non-affiliated third party) when someone has engaged in or threatens to engage

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in stalking, threatening, harassing or other improper behavior that presents a danger to the welfare of the Complainant or others;

- The right to notification of and options for, and available assistance in, changing academic and employment and living situations after an alleged discrimination incident, if so requested by the party and if such changes are reasonably available (no formal report, or investigation, campus or criminal, need occur before this option is available). Accommodations may include:
  - Assistance with housing resources;
  - Exam (paper, assignment) rescheduling;
  - Taking an incomplete in a class;
  - Transferring class sections;
  - Temporary withdrawal;
  - Alternative course completion options;
  - Assistance with on-campus employment situations.
  
- The right to have McLennan Community College maintain such accommodations for as long as necessary, and for supportive measures to remain confidential, provided confidentiality does not impair the institution's ability to provide accommodations or supportive measures;
- The right to receive sufficiently advanced written notice of any meeting or interview involving the other party, when possible;
- The right to know the relevant and directly related evidence obtained and to respond to that evidence;
- The right to be fully informed of campus policies and procedures as well as the nature and extent of all alleged violations contained within the report;
- The right to fair opportunity to provide the Investigator(s) with their account of the alleged misconduct and have that account be on the record;
- The right to regular updates on the status of the investigation and/or resolution;
- The right to preservation of privacy, to the extent possible and permitted by law;
- The right to request any McLennan Community College representative in the process be recused because of demonstrated bias or conflict of interest;
- The right to bring an advisor of the party's choosing to all phases of the investigation and resolution proceeding;
- The right to the use of the appropriate standard of evidence, preponderance of the evidence, to make a finding after an objective evaluation of all relevant evidence;
- The right to be present, including via remote technology, during all testimony given and evidence presented during any formal grievance hearing;
- The right to be informed in writing when a decision by McLennan Community College is considered final, any changes to the outcomes that occur before the decision is finalized.
- The right to be informed of the opportunity to appeal the finding(s) and

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sanction(s) of the resolution process, and the procedures for doing so in accordance with the standards for appeal established by McLennan Community College; and

- The right to a fundamentally fair resolution as defined herein.

### Title IX Only:

- The right to ask the Investigator(s) and Decision-maker(s) to identify and question relevant witnesses, including expert witnesses;
- The right to provide the Investigator(s)/Decision-maker(s) with a list of questions that, if deemed relevant by the Investigator(s)/Chair, may be asked of any part or witness;
- The right not to have irrelevant prior sexual history or character admitted as evidence;
- The right to receive a copy of the investigation report, including all factual, policy, and/or credibility analyses performed, and all relevant and directly related evidence available and used to produce the investigation report, subject to the privacy limitations imposed by state and federal law, prior to the hearing, and the right to have at least ten (10) College business days to review the report prior to the hearing;
- The right to respond to the investigation report, including comments providing any additional relevant evidence after the opportunity to review the investigation report, and to have that response on the record;
- The right to be informed of the names of all witnesses whose information will be used to make a finding, in advance of that finding, when relevant;
- The right to have reports of alleged Policy violations addressed by Investigators, Title IX Coordinators, and Decision-maker(s) who have received at least eight hours of relevant annual training;
- The right to submit an impact statement in writing to be considered by the Decision-maker(s) following a determination of responsibility, but prior to sanctioning; and
- The right to be promptly informed of outcomes in writing of the finding(s) and sanction(s) of the resolution process and a detailed rationale, delivered simultaneously to both parties.

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### **Appendix C. Right to an Advisor**

The parties may each have an Advisor of their choice present with them for all meetings, interviews, and hearings within the Resolution Process, if they so choose. The parties may select whoever they wish to serve as their Advisor as long as the Advisor is eligible and available.

Choosing an Advisor who is also a witness in the process creates potential for bias and conflict of interest. A party who chooses an Advisor who is also a witness can anticipate that issues of potential bias will be explored by the hearing Decision-maker(s).

The Recipient may permit parties to have more than one Advisor upon special request to the Title IX Coordinator. The decision to grant this request is at the sole discretion of the Title IX Coordinator and will be granted equitably to all parties.

#### **I. Who Can Serve as an Advisor**

The Advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the Resolution Process. The parties may choose Advisors from inside or outside of the MCC community.

The Title IX Coordinator will also offer to assign a trained Advisor to any party if the party so chooses. If the parties choose an Advisor from the investigators available from MCC, the Advisor will have been trained by MCC and be familiar with MCC's Resolution Process.

If the parties choose an Advisor from outside the investigators of those identified by MCC, the Advisor may not have been trained by MCC and may not be familiar with MCC policies and procedures.

Parties also have the right to choose not to have an Advisor in the initial stages of the Resolution Process, prior to a hearing.

#### **II. Advisor's Role in Meetings and Interviews**

The parties may be accompanied by their Advisor in all meetings and interviews at which the party is entitled to be present, including intake and interviews. Advisors should help the parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith.

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MCC cannot guarantee equal Advisory rights, meaning that if one party selects an Advisor who is an attorney, but the other party does not or cannot afford an attorney, MCC is not obligated to provide an attorney.

### III. Advisors in Hearings

Under the Title IX Regulations, a form of indirect questioning is required during the hearing but must be conducted by the parties' Advisors. The parties are not permitted to directly question each other or any witnesses.

### IV. Pre-Interview Meetings

Advisors and their advisees may request to meet with the Investigator(s) conducting interviews/meetings in advance of these interviews or meetings. This pre-meeting allows Advisors to clarify and understand their role and MCC's policies and procedures.

### V. Advisor Violations of Recipient Policy

All Advisors are subject to the same MCC policies and procedures, whether they are attorneys or not, and whether they are selected by a party or assigned by MCC. Advisors are expected to advise their advisees without disrupting proceedings. Advisors should not address Recipient officials or Investigators in a meeting or interview unless invited to do so (e.g., asking procedural questions). The Advisor may not make a presentation or represent their advisee during any meeting or proceeding and may not speak on behalf of the advisee to the Investigator(s) or other Decision-maker(s) except during a hearing proceeding during questioning.

The parties are expected to ask and respond to questions on their own behalf throughout the investigation phase of the Resolution Process. Although the Advisor generally may not speak on behalf of their advisee, the Advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any Resolution Process meeting or interview. For longer or more involved discussions, the parties and their Advisors should ask for breaks to allow for private consultation.

Any Advisor who oversteps their role as defined by this Policy, or who refuses to comply with MCC's established rules of decorum for the hearing, will be warned. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting/interview/hearing may be ended, or other appropriate measures implemented, including MCC requiring the party to use a different Advisor. Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.

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**VI. Sharing Information with the Advisor**

MCC expects that the parties may wish to have MCC share documentation and evidence related to the allegations with their Advisors. MCC provides a consent form that authorizes MCC to share such information directly with a party's Advisor. The parties must either complete and submit this form to the Title IX Coordinator or provide similar documentation demonstrating consent to a release of information to the Advisor before MCC is able to share records with an Advisor.

**VII. Privacy of Records Shared with Advisor**

Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by MCC. MCC may restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by MCC's privacy expectations.

**VIII. Expectation of an Advisor**

MCC generally expects an Advisor to adjust their schedule to allow them to attend MCC meetings/interviews/hearings when planned, but MCC may change scheduled meetings/interviews/hearings to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay.

MCC may also make reasonable provisions to allow an Advisor who cannot be present in person to attend a meeting/interview/hearing by telephone, video conferencing, or other similar technologies as may be convenient and available.

**IX. Expectations of the Parties with Respect to Advisors**

A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. The parties are expected to inform the Investigator(s) of the identity of their Advisor at least two (2) business days before the date of their first meeting with Investigators (or as soon as possible if a more expeditious meeting is necessary or desired).

The parties are expected to provide timely notice to the Title IX Coordinator if they change Advisors at any time. It is assumed that if a party changes Advisors, consent to share information with the previous Advisor is terminated, and a release for the new Advisor should be secured. Parties are expected to inform the Title IX Coordinator of the identity of their hearing Advisor at least two (2) business days before the hearing.

**POLICIES AND PROCEDURES**

**X. Assistance in Securing an Advisor**

For representation, Respondents may wish to contact organizations such as:

- Families Advocating for Campus Equality (<http://www.facecampusequality.org>)
- Stop Abusive and Violent Environments (<http://www.saveservices.org>)

Complainants may wish to contact organizations such as:

- The Victim Rights Law Center (<http://www.victimrights.org>)
- The National Center for Victims of Crime (<http://www.victimsofcrime.org>), which maintains the Crime Victim's Bar Association
- The Time's Up Legal Defense Fund (<https://nwlc.org/times-up-legal-defense-fund/>)