

# EQUITY GRIEVANCE PROCEDURE

## THE 2020 ATIXA ONE POLICY, TWO PROCEDURES (1P2P) MODEL

**THIS SEPTEMBER VERSION OF 1P2P IS THE  
FOURTH PROVISIONAL DRAFT SINCE JUNE 2020.**

**THE DOCUMENT MAY STILL BE REVIEWED AND REVISED  
FOR COMPLIANCE WITH THE 2020 REGULATIONS, AS  
ADDITIONAL GUIDANCE IS PROVIDED BY THE OPEN CENTER.**

AUTHORED BY:

TANYKA M. BARBER, J.D.

W. SCOTT LEWIS, J.D.

ANNA OPPENHEIM, J.D.

KIM PACELLI, J.D.

SAUNDRA K. SCHUSTER, J.D.

BRETT A. SOKOLOW, J.D.

DANIEL C. SWINTON, J.D., ED.D.

SPECIAL THANKS TO ATIXA PUBLICATIONS COMMITTEE MEMBERS  
JONI BAKER, MANDY HAMBLETON, AND ERIC A. KIDWELL FOR EDITING  
AND PROVIDING FEEDBACK.

SPECIAL THANKS TO THE ATIXA MEMBER REVIEW TEAM OF ANGELA  
MARIE CATENA, DONALD KAMM, RYAN THOMPSON, AMY ZAVADIL,  
LAURA RODAS, CHRISTY SIGLER, AND EMILY BABB FOR ADDITIONAL  
EDITS AND FEEDBACK.

THROUGH THIS LIMITED LICENSE, ELECTRONIC COPIES OF THIS  
PUBLICATION ARE PROVIDED EXCLUSIVELY TO PURCHASERS,  
ATIXA PREMIUM MEMBERS, AND SUPER MEMBERS FOR INTERNAL  
INSTITUTIONAL USE ONLY, AND SHALL NOT BE DISTRIBUTED OR  
POSTED PUBLICLY UNLESS ADAPTED OR ADOPTED AS INSTITUTIONAL  
POLICY AND PUBLISHED IN THAT FORM IN HARDCOPY AND/OR  
ONLINE. NO OTHER USE IS PERMITTED. USERS ACCEPT THIS  
TEMPLATE AT THEIR OWN RISK, RECEIVE NO ASSURANCE OF  
COMPLIANCE, AND EXPRESSLY AGREE TO INDEMNIFY TNG, LLC,  
AND ATIXA FOR ANY LIABILITY RELATED TO ITS USE, ACCURACY,  
IMPLEMENTATION, OR ADAPTATION.

THIS IS A MODEL POLICY AND PROCEDURES AND IS NOT CONSIDERED  
TO BE TRAINING MATERIALS, THOUGH TRAINING ON ITS CONTENTS  
MAY BE DEVELOPED BY MPCC.

THIS MODEL IS OFFERED WITHOUT ANY GUARANTEES OF COMPLIANCE  
WITH ANY LAWS. ALWAYS CONSULT LEGAL COUNSEL BEFORE  
ADOPTING POLICIES AND PROCEDURES.

© SEPTEMBER 2020 ATIXA. ALL RIGHTS RESERVED.

ATIXA MODEL

**INTERIM POLICY AND PROCEDURES**

EQUAL OPPORTUNITY, HARASSMENT, AND NONDISCRIMINATION  
FOR ALL FACULTY, STUDENTS, EMPLOYEES, AND THIRD-PARTIES

### **ONE POLICY, TWO PROCEDURES MODEL (1P2P)**

1P2P is a unified policy and procedure for the resolution of all allegations  
of all forms of discrimination involving all students and employees.

This model policy and procedures can be implemented at large or  
small campuses and within public universities, private colleges, and  
community colleges. ATIXA recognizes that schools vary in size,  
structure, governance, capacity, and resources and has drafted this model  
to comply with the federal 2020 Title IX Regulations. It is intended to help  
MPCC comply with Title IX and other civil rights and nondiscrimination  
laws and regulations.

ATIXA cannot fully anticipate how the U.S. Department of Education's  
Office for Civil Rights (OCR) will interpret its final regulations and cautions  
users that updates to this model may be necessary as OCR provides  
additional clarifications and technical guidance.

THE FOLLOWING STATEMENT MUST APPEAR IN  
ANY VERSION OF THIS MODEL USED BY A LICENSEE:

ATIXA 2020 ONE POLICY, TWO PROCEDURES MODEL  
USE AND ADAPTATION OF THIS MODEL WITH CITATION  
TO ATIXA IS PERMITTED THROUGH A LIMITED LICENSE  
**TO MID-PLAINS COMMUNITY COLLEGE (MPCC)**

ALL OTHER RIGHTS RESERVED.

©2020. ATIXA

POLICY: Equal Opportunity, Harassment, and Nondiscrimination

#### 1. **Glossary**

- *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.
- *Complainant* means an individual who is alleged to be the victim of conduct that could constitute harassment or discrimination based on a protected class, or retaliation for engaging in a protected activity.
- *Complaint (formal)* means a document submitted or signed by a Complainant or signed by the Title IX Coordinator alleging harassment or discrimination based on a protected class or retaliation for engaging in a protected activity against a Respondent and requesting that MPCC investigate the allegation.
- *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).
- *Day* means a business day when MPCC is in normal operation.
- *Decision-maker* is the person, panel, and/or Chair 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 investigation report or Decision-maker. Compare to Relevant Evidence, below.
- *Education program or activity* means locations, events, or circumstances where MPCC exercises substantial control over both

the Respondent and the context in which the sexual harassment, discrimination, and/or retaliation occurs and also includes any building owned or controlled by a student organization that is officially recognized by the MPCC.

- *Final Determination*: A conclusion by the Clear and Convincing standard of proof that the alleged conduct did or did not violate policy.
- *Finding*: A conclusion by the Clear and Convincing standard of proof that the conduct did or did not occur as alleged (as in a “finding of fact”). Clear and Convincing is a firm belief that the allegations are true.
- *Formal Grievance Process* means “Process A,” a method of formal resolution designated by MPCC to address conduct that falls within the policies included below, and which complies with the requirements of the Title IX regulations (34 CFR §106.45).
- *Grievance Process Pool* includes any investigators, hearing officers, appeal officers, and Advisors who may perform any or all of these roles (though not at the same time or with respect to the same case).
- *Investigator* means the person or persons charged by MPCC with gathering facts about an alleged violation of this Policy, assessing relevance and credibility, synthesizing the evidence, and compiling this information into an investigation report and file of directly related evidence.
- *Mandated Reporter* means an employee of MPCC who is obligated by policy to share knowledge, notice, and/or reports of harassment and/or retaliation with the Title IX Coordinator [and/or their supervisor].<sup>1</sup>
- *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 an employee of MPCC explicitly vested with the responsibility to implement corrective measures for sexual harassment and/or retaliation on behalf of MPCC.
- *Parties* include the Complainant(s) and Respondent(s), collectively.
- *Process A* means the Formal Grievance Process detailed below and defined above.
- *Recipient* means a postsecondary education program that is a recipient of federal funding.
- *Relevant Evidence* is evidence that tends to prove (inculpatory) or disprove (exculpatory) an issue in the complaint.
- *Remedies* are post-finding actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to MPCC’s educational 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 class, or retaliation for engaging in a protected activity.
- *Resolution* means the result of an informal or Formal Grievance Process.
- *Sanction* means a consequence imposed by MPCC on a Respondent who is found to have violated this policy.
- *Sexual Harassment* is the umbrella category including the offenses of sexual harassment, sexual assault, stalking, dating violence, and domestic violence. See Section 17.b. (p. ) for greater detail.
- *Title IX Coordinator* is at least one official designated by MPCC to ensure compliance with Title IX and MPCC’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 investigators, and any member of the Grievance Process Pool.

<sup>1</sup> Not to be confused with those mandated by state law to report child abuse, elder abuse, and/or abuse of individuals with disabilities to appropriate officials, though these responsibilities may overlap with those who have mandated reporting responsibility in this Policy.

## **2. Rationale for Policy**

MPCC is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities, that are free from discrimination and harassment based on a protected category, and retaliation for engaging in a protected activity.

To ensure compliance with federal, state, and local civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the educational program or activity, MPCC has developed internal policies and procedures that provide a prompt, fair, and impartial process for those involved in an allegation of discrimination or harassment on the basis of protected class status, and for allegations of retaliation.

MPCC values and upholds the equal dignity of all members of its community and strives to balance the rights of the parties in the grievance process during what is often a difficult time for all those involved.

## **3. Applicable Scope**

The core purpose of this policy is the prohibition of all forms of discrimination<sup>2</sup>. Sometimes, discrimination involves exclusion from or different treatment in activities, such as admission, athletics, or employment. At other times, discrimination takes the form of harassment or, in the case of sex-based discrimination, it can encompass sexual harassment, sexual assault, stalking, sexual exploitation, dating violence, or domestic violence. When an alleged violation of this nondiscrimination policy is reported, the allegations are subject to resolution using MPCC’s “Process A,” as determined by the Title IX Coordinator, and as detailed below.

When the Respondent is a member of the MPCC community, a formal complaint may be filed and a grievance process may be available regardless of the status of the Complainant, who may or may not be a member of the MPCC community. This community includes, but is not limited to, students,<sup>3</sup> student organizations, faculty, administrators, staff, and third parties such as guests, visitors, volunteers, vendors, contractors, invitees, and campers. The procedures below may be applied to incidents, to patterns, and/or to the campus climate, all of which may be addressed and investigated in accordance with this policy.

<sup>2</sup> For a narrower Title IX-based statement, or for template language to include in handbooks, catalogs, etc., please see Appendix F.

<sup>3</sup> For the purpose of this policy, MPCC defines “student” as 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 relationship with MPCC.

## **4. Title IX Coordinator**

The Director of Human Resources serves as the Title IX Coordinator and oversees implementation of MPCC's policy on equal opportunity, harassment, and nondiscrimination.

The Title IX Coordinator has the primary responsibility for coordinating MPCC's efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remedy, and prevent discrimination, harassment, and retaliation prohibited under this policy.

All parties will be provided with a comprehensive brochure detailing options and resources, which the Title IX Coordinator may also go over in person with the parties, as appropriate.

### **5. Independence and Conflict-of-Interest**

The Title IX Coordinator manages the Title IX Team and acts with independence and authority free from bias and conflicts of interest. The Title IX Coordinator oversees all resolutions under this policy and these procedures. The members of the Title IX Team are vetted and trained to ensure they are not biased for or against any party in a specific case, or for or against Complainants and/or Respondents, generally.

To raise any concern involving bias or conflict of interest by the Title IX Coordinator, contact the MPCC College President, Ryan Purdy, at (308) 535-3719. Concerns of bias or a potential conflict of interest by any other Title IX Team member should be raised with the Title IX Coordinator.

Reports of misconduct committed by the Title IX Coordinator should be reported to the MPCC College President, Ryan Purdy, at (308) 535-3719 or designee. Reports of misconduct committed by any other Title IX Team member should be reported to the Title IX Coordinator.

### **6. Administrative Contact Information**

Complaints or notice of alleged policy violations, or inquiries about or concerns regarding this policy and procedures, may be made internally to:

Rebecca Wrage | Title IX /ADA Coordinator | Director of Human Resources | 1101 Halligan Dr., North Platte 69101 (308) 535-3679 | Email: wrager@mpcc.edu

Kelly Rippen | McCook Campus Vice President | 1205 East 3<sup>rd</sup> Street, McCook, NE 69001 (308) 345-8107 | Email: rippenk@mpcc.edu

MPCC has determined that the following administrators are Officials with Authority to address and correct sexual harassment and/or retaliation. In addition to the Title IX Team members listed above, these Officials with Authority listed below may also accept notice or complaints on behalf of MPCC:

Dr. Brian Obert | Dean of Student Life | 1205 East 3<sup>rd</sup> Street, McCook, NE 69001 | (308) 345-8109 | Email: obertb@mpcc.edu

Jason Osmotherly | Assoc. Dean of Student Life | 1101 Halligan Dr. 400 WWWood Bldg (North Campus) North Platte, NE 69101 | (308) 535-3635 | Email: osmotherlyj@mpcc.edu

MPCC has also classified all employees as Mandated Reporters of any knowledge they have that a member of the community is experiencing sexual harassment and/or retaliation.

Inquiries may be made externally to:

Office for Civil Rights (OCR) | Equal Employment Opportunity Commission (EEOC) | U.S. Department of Education | 400

Maryland Avenue, SW | Washington, DC 20202-1100 | TDD#: (877) 521-2172 | Email: OCR@ed.gov | Contact: <https://www.eeoc.gov/contact-eeoc/>

Mid-Plains Community College is under the Kansas City Area EEOC Office:

Customer Service Hotline #: (800) 421-3481 | Location: Gateway Tower II | Facsimile: (202) 453-6012 | 400 State Ave., Suite 905 Kansas City, KS 66101 | Phone: 1-800-669-4000 Web: <http://www.ed.gov/ocr> (<http://www.ed.gov/ocr/>)

For complaints involving employees: Equal Employment Opportunity Commission (<https://www.eeoc.gov/contact-eeoc/>) (EEOC)<sup>4</sup>

### **7. Notice/Complaints of Discrimination, Harassment, and/or Retaliation**

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

1. File a complaint with, or give verbal notice to, the Title IX Coordinator. Such a report may be made at any time (including during non-business hours) by using the telephone number or email address, or by mail, to the office listed for the Title IX Coordinator or any other official listed.
2. Report online, using the reporting form posted at <http://www.mpcc.edu/current-students/report-an-incident.php> Click on the "Make a Report" Button. Anonymous reports are accepted but can give rise to a need to investigate to determine if the parties can be identified. If not, no further formal action is taken, though measures intended to protect the community may be enacted. MPCC tries to provide supportive measures to all Complainants, which may be impossible with an anonymous report that does not identify the Complainant.

Because reporting carries no obligation to initiate a formal response, and because MPCC respects Complainant requests to dismiss complaints unless there is a compelling threat to health and/or safety, the Complainant is largely in control and should not fear a loss of confidentiality by making a report that allows MPCC to discuss and/or provide supportive measures.<sup>5</sup>

A Formal Complaint means a document submitted or signed by the Complainant or signed by the Title IX Coordinator or Deans of Student Life alleging a policy violation by a Respondent and requesting that MPCC investigate the allegation(s).

A complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail; by using the contact information in the section immediately above; or as described in this section. As used in this paragraph, the phrase "document filed by a Complainant" means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the MPCC that contains the Complainant's physical or digital signature, or otherwise indicates that the Complainant is the person filing the complaint, and requests that MPCC investigate the allegations).

If notice is submitted in a form that does not meet this standard, the Title IX Coordinator or Deans of Student Life will contact the Complainant to ensure that it is filed correctly.

<sup>4</sup> EEOC has jurisdiction over Title IX employment claims. Mid-Plains Community College is under the Kansas City Area EEOC Office. 1-800-669-4000.

<sup>5</sup> Not all institutions consider online reports to be formal complaints.

### **8. Supportive Measures**

MPCC will offer and implement appropriate and reasonable supportive measures to the parties upon notice of alleged sexual harassment and/or retaliation.

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate and as reasonably available. They are offered without fee or charge to the parties to restore or preserve access to MPCC's education program or activity, including measures designed to protect the safety of all parties and/or MPCC's educational environment, and/or to deter harassment, discrimination, and/or retaliation. MPCC employees and students have access to no cost, college-provided, Title IX advisors and mental health counseling.

The Title IX Coordinator or Deans of Student Life promptly makes supportive measures available to the parties upon receiving notice or a complaint. At the time that supportive measures are offered, the MPCC will inform the Complainant, in writing, that they may file a formal complaint with MPCC either at that time or in the future, if they have not done so already. The Title IX Coordinator or Deans of Student Life works with the Complainant to ensure that their wishes are taken into account with respect to the supportive measures that are planned and implemented.

The MPCC will maintain the confidentiality of the supportive measures, provided that confidentiality does not impair the MPCC's ability to provide those supportive measures. MPCC will act to ensure as minimal an academic/occupational impact on the parties as possible. MPCC will implement measures in a way that does not unreasonably burden the other party.

These actions may include, but are not limited to:

- Referral to counseling, medical, and/or other health care services
- Referral to the Employee Assistance Program
- Referral to community-based service providers
- Student financial aid counseling
- Education to the institutional community or community subgroup(s)
- Altering campus housing assignment(s)
- Altering work arrangements for employees or student-employees
- Safety planning
- Providing campus safety escorts
- Providing transportation accommodations
- Implementing contact limitations (no contact orders) between the parties
- Academic support, extensions of deadlines, or other course/program-related Adjustments.
- Trespass, Persona Non Grata(PNG),or Be-On-the-Lookout(BOLO)orders

- Time warnings
- Class schedule modifications, withdrawals, or leaves of absence
- Increased security and monitoring of certain areas of the campus
- Any other actions deemed appropriate by the Title IX Coordinator

Violations of no contact orders or other restrictions will be referred to appropriate student or employee conduct processes for enforcement.

### **9. Emergency Removal**

MPCC can act to remove a student Respondent entirely or partially from its education program or activities on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal.

This risk analysis is performed by the Title IX Coordinator or Deans of Student Life, in conjunction with the CARE Team using its standard objective violence risk assessment procedures. The Campus Access, Retention & Equity (CARE) Team is a multidisciplinary partnership which consists of faculty, staff and administrators that evaluate and assess distressing or concerning behaviors.

In all cases in which an emergency removal is imposed, the student will be given notice of the action and the option to request to meet with the Title IX Coordinator or Deans of Student Life prior to such action/removal being imposed, or as soon thereafter as reasonably possible, to show cause why the action/removal should not be implemented or should be modified.

This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate. When this meeting is not requested in a timely manner, objections to the emergency removal will be deemed waived. A Complainant and their Advisor may be permitted to participate in this meeting if the Title IX Coordinator or Deans of Student Life determines it is equitable to do so. This section also applies to any restrictions that a coach or athletic administrator may place on a student-athlete arising from allegations related to Title IX. There is no appeal process for emergency removal decisions.

A Respondent may be accompanied by an Advisor of their choice when meeting with the Title IX Coordinator or Deans of Student Life for the show cause meeting. The Respondent will be given access to a written summary of the basis for the emergency removal prior to the meeting to allow for adequate preparation.

The Title IX Coordinator has sole discretion under this policy to implement or stay an emergency removal and to determine the conditions and duration. Violation of an emergency removal under this policy will be grounds for discipline within the student or employee conduct processes, which may include expulsion or termination.

MPCC will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. As determined by the Title IX Coordinator or Deans of Student Life, these actions could include, but are not limited to: removing a student from a residence hall, temporarily re-assigning an employee, restricting a student's or employee's access to or use of facilities or equipment, allowing a student to withdraw or take grades of incomplete without financial penalty, authorizing an administrative leave, and suspending a student's



participation in extracurricular activities, student employment, student organizational leadership, or intercollegiate/intramural athletics.

At the discretion of the Title IX Coordinator or Deans of Student Life, alternative coursework options may be pursued to ensure as minimal an academic impact as possible on the parties.

When the Respondent is an employee, existing provisions for interim action are applicable instead of the above emergency removal process.

#### **10. Promptness**

All allegations are acted upon promptly by MPCC once it has received notice or a formal complaint. Complaints can take 60-90 business days to resolve, typically. There are always exceptions and extenuating circumstances that can cause a resolution to take longer, but MPCC will avoid all undue delays within its control.

Any time the general timeframes for resolution outlined in MPCC procedures will be delayed, MPCC will provide written notice to the parties of the delay, the cause of the delay, and an estimate of the anticipated additional time that will be needed as a result of the delay.

#### **11. Confidentiality/Privacy**

Every effort is made by MPCC to preserve the confidentiality of reports.<sup>6</sup> MPCC will not share the identity of any individual who has made a report or complaint of harassment, discrimination, or retaliation; any Complainant; any individual who has been reported to be the perpetrator of sex discrimination; any Respondent, or any witness, except as permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g; FERPA regulations, 34 CFR part 99; or as required by law; or to carry out the purposes of 34 CFR Part 106, including the conducting of any investigation, hearing, or grievance proceeding arising under these policies and procedures.

MPCC reserves the right to determine which MPCC officials have a legitimate educational interest in being informed about incidents that fall within this policy, pursuant to the Family Educational Rights and Privacy Act (FERPA).

Only a small group of officials who need to know will typically be told about the complaint, including but not limited to: Office of Human Resources, Office of Student Affairs and the CARE Team.

Information will be shared as necessary with Investigators, Decision-makers, witnesses, and the parties. The circle of people with this knowledge will be kept as tight as possible to preserve the parties' rights and privacy.

MPCC may contact parents/guardians to inform them of situations in which there is a significant and articulable health and/or safety risk but will usually consult with the student first before doing so.

Confidentiality and mandated reporting are addressed more specifically be

<sup>6</sup> For the purpose of this policy, privacy and confidentiality have distinct meanings. **Privacy** means that information related to a complaint will be shared with a limited number of MPCC employees who "need to know" in order to assist in the assessment, investigation, and resolution of the report. All employees who are involved in the MPCC's response to notice under this policy receive specific training and guidance about sharing and safeguarding private information in

accordance with state and federal law. The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act ("FERPA"), as outlined in the MPCC's Student Records Policy. The privacy of employee records will be protected in accordance with Human Resources policies. **Confidentiality** exists in the context of laws (including Title IX) that protect certain relationships, including those who provide services related to medical and clinical care, mental health providers, counselors, and ordained clergy. The law creates a privilege between certain health care providers, mental health care providers, attorneys, clergy, spouses, and others, with their patients, clients, parishioners, and spouses. MPCC has designated individuals who have the ability to have privileged communications as Confidential Resources. For more information about Confidential Resources, see page 26. When information is shared by a Complainant with a Confidential Resource, the Confidential Resource cannot reveal the information to any third party except when an applicable law or a court order requires or permits disclosure of such information. For example, information may be disclosed when: (i) the individual gives written consent for its disclosure; (ii) there is a concern that the individual will likely cause serious physical harm to self or others; or (iii) the information concerns conduct involving suspected abuse or neglect of a minor under the age of 18, elders, or individuals with disabilities. Non-identifiable information may be shared by Confidential Resources for statistical tracking purposes as required by the federal Clergy Act. Other information may be shared as required by law.

#### **12. Jurisdiction of MPCC**

This Policy applies to the education program and activities of MPCC<sup>7</sup>, to conduct that takes place on the campus or on property owned or controlled by MPCC, at MPCC-sponsored events, and in buildings owned or controlled by MPCC's recognized student organizations. The Respondent must be a member of MPCC's community in order for this Policy to apply.

This Policy can also be applicable to the effects of off-campus misconduct that effectively deprive a person of access to MPCC's educational program. MPCC may also extend jurisdiction to off-campus and/or to online conduct when the Title IX Coordinator or Deans of Student Life determines that the conduct affects a substantial MPCC interest.

Regardless of where the conduct occurred, MPCC will address notice/complaints to determine whether the conduct occurred in the context of its employment or educational program or activity and/or has continuing effects on campus or in an off-campus sponsored program or activity. A substantial MPCC interest includes:

- a. Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law;
- b. Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student, employee, or other individual;
- c. Any situation that significantly impinges upon the rights, property, or achievements of others, significantly breaches the peace, and/or causes social disorder; and/or

d. Any situation that substantially interferes with the educational interests or mission of MPCC.

If the Respondent is unknown or is not a member of the MPCC community, the Title IX Coordinator or Deans of Student Life will assist the Complainant in identifying appropriate campus and local resources and support options. If criminal conduct is alleged, MPCC can assist in contacting local or campus law enforcement if the individual would like to file a police report.

Further, even when the Respondent is not a member of the MPCC community, supportive measures, remedies, and resources may be provided to the Complainant by contacting the Title IX Coordinator or Deans of Student Life.

In addition, MPCC may take other actions as appropriate to protect the Complainant against third parties, such as barring individuals from MPCC property and/or events.

All vendors serving MPCC through third-party contracts are subject to the policies and procedures of their employers and/or to these policies and procedures to which their employer has agreed to be bound by their contracts.

When the Respondent is enrolled in or employed by another institution, the Title IX Coordinator or Deans of Student Life can assist the Complainant in liaising with the appropriate individual at that institution, as it may be possible to allege violations through that institution's policies.

Similarly, the Title IX Coordinator or Deans of Student Life may be able to assist and support a student or employee Complainant who experiences discrimination in an externship, study abroad program, or other environment external to MPCC where sexual harassment or nondiscrimination policies and procedures of the facilitating or host organization may give recourse to the Complainant.

<sup>7</sup> Which includes the work environment of MPCC's employees.

### **13. Time Limits on Reporting**

There is no time limitation on providing notice/complaints to the Title IX Coordinator or Deans of Student Life. However, if the Respondent is no longer subject to the MPCC's jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide remedies may be more limited or impossible.

Acting on notice/complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of policy) is at the discretion of the Title IX Coordinator, who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

When notice/complaint is affected by significant time delay, MPCC will typically apply the policy in place at the time of the alleged misconduct and the procedures in place at the time of notice/complaint.<sup>8</sup> Typically, this Policy is only applied to incidents that occurred after August 14, 2020. For incidents that occurred prior to August 14, 2020, previous versions of this policy will apply. Those versions are available from the Title IX Coordinator.

<sup>8</sup> There is an argument to be made to apply current policy definitions to past misconduct, but such an approach would

have to be consented to by the parties and/or carefully vetted with legal counsel.

### **14. Online Harassment and Misconduct**

The policies of MPCC are written and interpreted broadly to include online manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on MPCC's education program and activities or when they involve the use of MPCC networks, technology, or equipment.

Although MPCC may not control websites, social media, and other venues in which harassing communications are made, when such communications are reported to MPCC, it will engage in a variety of means to address and mitigate the effects.

Members of the community are encouraged to be good digital citizens and to refrain from online misconduct, such as feeding anonymous gossip sites, sharing inappropriate content via social media, unwelcome sexual or sex-based messaging, distributing or threatening to distribute revenge pornography, breaches of privacy, or otherwise using the ease of transmission and/or anonymity of the Internet or other technology to harm another member of the MPCC community.

Any online posting or other electronic communication by students, including cyber-bullying, cyber-stalking, cyber-harassment, etc., occurring completely outside of the MPCC's control (e.g., not on MPCC networks, websites, or between MPCC email accounts) will only be subject to this policy when such online conduct can be shown to cause a substantial in-program disruption or infringement on the rights of others.

Otherwise, such communications are considered speech protected by the First Amendment. Supportive measures for Complainants will be provided, but protected speech cannot legally be subjected to discipline.

Off-campus harassing speech by employees, whether online or in person, may be regulated by MPCC only when such speech is made in an employee's official or work-related capacity.

### **15. MPCC Policy on Nondiscrimination**

MPCC adheres to all federal, state, and local civil rights laws and regulations prohibiting discrimination in public institutions of higher education. MPCC's policy on nondiscrimination can be found at: <http://www.mpcc.edu/about/non-discrimination-policy.php>

MPCC does not discriminate against any employee, applicant for employment, student, or applicant for admission on the basis of

- Race,
- Religion,
- Hearing status,
- Personal appearance,
- Color,
- Sex,
- Pregnancy,
- Political affiliation,
- Source of income,
- Place of business,
- Residence,
- Creed,
- Ethnicity,

- National origin (including ancestry),
- Citizenship status,
- Physical or mental disability (including perceived disability),
- Age,
- Marital status,
- Family responsibilities,
- Sexual orientation,
- Gender identity,
- Gender expression,
- Veteran or military status (including disabled veteran, recently separated veteran, active duty wartime or campaign badge veteran, and Armed Forces Service Medal veteran),
- Predisposing genetic characteristics,
- Domestic violence victim status,
- Height,
- Weight
- or any other protected category under applicable local, state, or federal law, including protections for those opposing discrimination or participating in any grievance process on campus, with the Equal Employment Opportunity Commission, and/or other human/civil rights agencies.

This Policy covers nondiscrimination in both employment and access to educational opportunities. Therefore, any member of the MPCC community whose acts deny, deprive, or limit the educational or employment or residential and/or social access, benefits, and/or opportunities of any member of the MPCC community, guest, or visitor on the basis of that person's actual or perceived membership in the protected classes listed above is in violation of the MPCC Policy on Nondiscrimination.

When brought to the attention of MPCC, any such discrimination will be promptly and fairly addressed and remedied by the MPCC according to the appropriate grievance process described below.

#### **16. Policy on Disability Discrimination and Accommodation**

MPCC is committed to full compliance with the Americans With Disabilities Act of 1990 (ADA), as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibit discrimination against qualified persons with disabilities, as well as other federal, state, and local laws and regulations pertaining to individuals with disabilities.

Under the ADA and its amendments, a person has a disability if they have a physical or mental impairment that substantially limits a major life activity.

The ADA also protects individuals who have a record of a substantially limiting impairment or who are regarded as disabled by MPCC, regardless of whether they currently have a disability. A substantial impairment is one that significantly limits or restricts a major life activity such as hearing, seeing, speaking, breathing, performing manual tasks, walking, or caring for oneself.

The ADA Coordinator has been designated as MPCC's ADA/504 Coordinator responsible for overseeing efforts to comply with these disability laws, including responding to grievances and conducting investigations of any allegation of noncompliance or discrimination based on disability.

Grievances related to disability status and/or accommodations will be addressed using the procedures below.

##### **a. Students with Disabilities**

MPCC is committed to providing qualified students with disabilities with reasonable accommodations and support needed to ensure equal access to the academic programs, facilities, and activities of MPCC.

All accommodations are made on an individualized basis. A student requesting any accommodation should first contact the Director of Disability/Access Services, who coordinates services for students with disabilities.

The ADA Coordinator reviews documentation provided by the student and, in consultation with the student, determines which accommodations are appropriate for the student's particular needs and academic program(s) in accordance with MPCC's applicable policies.

##### **b. Employees with Disabilities**

Pursuant to the ADA, MPCC will provide reasonable accommodation(s) to all qualified employees with known disabilities when their disability affects the performance of their essential job functions, except when doing so would be unduly disruptive or would result in undue hardship to MPCC.

An employee with a disability is responsible for submitting a request for an accommodation to the Human Resources Director and providing necessary documentation. Human Resources Director will work with the employee's supervisor to identify which essential functions of the position are affected by the employee's disability and what reasonable accommodations could enable the employee to perform those duties in accordance with MPCC's applicable policies.

#### **17. Policy on Discriminatory Harassment**

Students, staff, administrators, and faculty are entitled to an employment and educational environment that is free of discriminatory harassment. This Policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane but controversial or sensitive subject matters protected by academic freedom.

The sections below describe the specific forms of legally prohibited harassment that are also prohibited under MPCC Policy. When speech or conduct is protected by academic freedom and/or the First Amendment, it will not be considered a violation of MPCC Policy, though supportive measures will be offered to those impacted. All offense definitions encompass actual and/or attempted offenses.

##### **a. Discriminatory Harassment**

Discriminatory harassment constitutes a form of discrimination that is prohibited by MPCC Policy. Discriminatory harassment is defined as unwelcome conduct by any member or group of the community on the basis of actual or perceived membership in a class protected by policy or law.

MPCC does not tolerate discriminatory harassment of any employee, student, visitor, or third-party. MPCC will act to remedy all forms of harassment when reported, whether or not the harassment rises to the level of creating a "hostile environment."

A hostile environment is one that unreasonably interferes with, limits, or effectively denies an individual's educational or employment access,

benefits, or opportunities.<sup>9</sup> This discriminatory effect results from harassing verbal, written, graphic, and/or physical conduct that is severe or pervasive **and** objectively offensive.

When discriminatory harassment rises to the level of creating a hostile environment, MPCC may also impose sanctions on the Respondent through application of the appropriate grievance process below.

MPCC reserves the right to address offensive conduct and/or harassment that 1) does not rise to the level of creating a hostile environment, or 2) that is of a generic nature and not based on a protected status. Addressing such conduct will not result in the imposition of discipline under MPCC policy, but may be addressed through respectful conversation, remedial actions, education, effective Alternative Resolution, and/or other informal resolution mechanisms.

For assistance with Alternative Resolution and other informal resolution techniques and approaches, employees should contact the Director of Human Resources/ the Title IX Coordinator, and students should contact the Deans of Student Life.

<sup>9</sup> This definition of hostile environment is based on Federal Register / Vol. 59, No. 47 / Thursday, March 10, 1994: Department of Education Office for Civil Rights, Racial Incidents and Harassment Against Students At (<https://www2.ed.gov/about/offices/list/ocr/docs/race394.html>) Educational Institutions Investigative Guidance. (<https://www2.ed.gov/about/offices/list/ocr/docs/race394.html>)

#### b. Sexual Harassment

The Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the State of Nebraska, regard Sexual Harassment as an unlawful discriminatory practice.

MPCC has adopted the following definition of sexual harassment in order to address the unique environment of an academic community.

Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.

Sexual harassment, as an umbrella category, includes the offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking, and is defined as:

Conduct on the basis of sex<sup>10</sup> or that is sexual in nature that satisfies one or more of the following:

1. Quid Pro Quo:
  - a. an employee of MPCC,
  - b. conditions<sup>11</sup> the provision of an aid, benefit, or service of MPCC,
  - c. on an individual's participation in unwelcome sexual conduct.
2. Sexual Harassment:
  - a. unwelcome conduct,
  - b. determined by a reasonable person,
  - c. to be so severe, and
  - d. pervasive, and,
  - e. objectively offensive,

f. that it effectively denies a person equal access to the MPCC's education program or activity.<sup>12</sup>

### 3. Sexual assault, defined as:

#### a. Sex Offenses, Forcible:

- Any sexual act<sup>13</sup> directed against another person<sup>14</sup>,
- without the consent of the Complainant,
- including instances in which the Complainant is incapable of giving consent.<sup>15</sup>

<sup>10</sup> Including sexual orientation and sex stereotypes.

<sup>11</sup> Implicitly or explicitly.

<sup>12</sup> Unwelcomeness is subjective and determined by the Complainant (except when the Complainant is younger than the age of consent). Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances ("in the shoes of the Complainant"), including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

<sup>13</sup> Sexual acts include:

#### Forcible Rape:

- Penetration,
- no matter how slight,
- of the vagina or anus with any body part or object, or
- oral penetration by a sex organ of another person,
- without the consent of the Complainant.

#### Forcible Sodomy:

- Oral or anal sexual intercourse with another person,
- forcibly,
- and/or against that person's will (non-consensually), or
- not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age<sup>#</sup> or because of temporary or permanent mental or physical incapacity.

#### Sexual Assault with an Object:

- The use of an object or instrument to penetrate,
- however slightly,



- the genital or anal opening of the body of another person,
- forcibly,
- and/or against that person's will (non-consensually),
- or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

**Forcible Fondling:**

- The touching of the private body parts of another person (buttocks, groin, breasts),
- for the purpose of sexual gratification,
- forcibly,
- and/or against that person's will (non-consensually),
- or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

<sup>14</sup> This would include having another person touch you sexually, forcibly, or without their consent.

<sup>15</sup> This definition set is not taken from SRS/NIBRS verbatim. ATIXA has substituted Complainant for "victim," has removed references to his/her throughout, has defined "private body parts," has removed the confusing and unnecessary term "unlawfully," and has inserted language clarifying that MPCC interprets "against the person's will" to mean "non-consensually." These are liberties ATIXA thinks are important to take with respect to the federal definitions, but users should consult legal counsel before adopting them.

**b. Sex Offenses, Non-forcible:**

- Incest:
  - a. Non-forcible sexual intercourse,
  - b. between persons who are related to each other,
  - c. within the degrees wherein marriage is prohibited by Nebraska State law.
- Statutory Rape:
  - a. Non-forcible sexual intercourse,
  - b. with a person who is under the statutory age of consent of 16 in Nebraska.

**4. Dating Violence, defined as:**

- a. violence,
- b. on the basis of sex,

- c. committed by a person,
- d. who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.

1. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition—
2. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
3. Dating violence does not include acts covered under the definition of domestic violence.

**5. Domestic Violence\*, defined as:**

- a. violence,
- b. on the basis of sex,
- c. committed by a current or former spouse or intimate partner of the Complainant,
- d. by a person with whom the Complainant shares a child in common, or
- e. by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
- f. by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Nebraska or
- g. by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of Nebraska.

\*To categorize an incident as Domestic Violence under this Policy, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

**6. Stalking, defined as:**

- a. engaging in a course of conduct,
- b. on the basis of sex,
- c. directed at a specific person, that

1. would cause a reasonable person to fear for the person's safety, or
2. the safety of others; or
3. Suffer substantial emotional distress.

For the purposes of this definition—

1. Course of conduct means two or more acts, including, but not limited to, acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils,

threatens, or communicates to or about a person, or interferes with a person's property.

2. Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
3. Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

## Policy expectations with respect to Consensual Relationships<sup>16</sup>

<sup>16</sup> The state definition of consent which is applicable to criminal prosecutions for sex offenses in Nebraska may differ from the definition used on campus to address policy violations. Included for Clery/VAWA Sec. 304 compliance purposes.

MPCC reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any offense under this policy. The most serious offenses are likely to result in suspension/expulsion/termination, where warranted. There are inherent risks in any romantic or sexual relationship between individuals in unequal positions such as faculty and student, supervisor and employee. These relationships may be less consensual than perceived by the individual whose position confers power. The relationship also may be viewed in different ways by each of the parties, particularly in retrospect. Furthermore, circumstances may change, and conduct that was previously welcome may become unwelcome. Even when both parties have consented at the outset to a romantic or sexual involvement, this past consent may not remove grounds for a later charge of a violation of applicable sections of this policy. The College does not wish to interfere with private choices regarding personal relationships when these relationships do not interfere with the goals and policies of the College. For the personal protection of members of this community, relationships in which power differentials are inherent (faculty student, staff-student, administrator-student) are generally discouraged.

Consensual romantic or sexual relationships in which one party maintains a direct supervisory or evaluative role over the other party are unethical. Therefore, persons with direct supervisory or evaluative responsibilities who are involved in such relationships must bring those relationships to the timely attention of their supervisor, and will likely result in the necessity to remove the employee from the supervisory or evaluative responsibilities, or shift a party out of being supervised or evaluated by someone with whom they have established a consensual relationship. This includes RAs and students over whom they have direct responsibility. Please see the Board of Governors Nepotism Policy for information on relationships that are prohibited by this policy, failure to self-report such relationships to a supervisor as required can result in disciplinary action for an employee. <http://www.mpcc.edu/about/board-of-governors.php>

MPCC reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any offense under this policy.

### c. Force, Coercion, Consent, and Incapacitation<sup>17</sup>

<sup>17</sup> The state definition of consent is 16 which is applicable to criminal prosecutions for sex offenses in Nebraska but may differ from the definition used on campus to address policy

violations. Included for Clery/VAWA Sec. 304 compliance purposes.

As used in the offenses above, the following definitions and understandings apply:

**Force:** Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g., "Have sex with me or I'll hit you," which elicits the response, "Okay, don't hit me, I'll do what you want.>").

Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

**Coercion:** Coercion is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

#### Consent is:

- knowing, and
- voluntary, and
- clear permission
- by word or action
- to engage in sexual activity.

Individuals may perceive and experience the same interaction in different ways. Therefore, it is the responsibility of each party to determine that the other has consented before engaging in the activity.

If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged.

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain *their* consent to being kissed back.

Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease within a reasonable time.

Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent.

Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on MPCC to determine whether its policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances,

including the context in which the alleged incident occurred and any similar and previous patterns that may be evidenced.

Consent in relationships must also be considered in context. When parties consent to BDSM<sup>18</sup> or other forms of kink, non-consent may be shown by the use of a safe word. Resistance, force, violence, or even saying “no” may be part of the kink and thus consensual, so MPCC’s evaluation of communication in kink situations should be guided by reasonableness, rather than strict adherence to policy that assumes non-kink relationships as a default.

<sup>18</sup> Bondage, discipline/dominance, submission/sadism, and masochism.

**Incapacitation:** A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious for any reason, including by alcohol or other drugs. As stated above, a Respondent violates this policy if they engage in sexual activity with someone who is incapable of giving consent.

It is a defense to a sexual assault policy violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. “Should have known” is an objective, reasonable person standard that assumes that a reasonable person is both sober and exercising sound judgment.

Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why, and how” of their sexual interaction).

Incapacitation is determined through consideration of all relevant indicators of an individual’s state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.

This policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs.

#### d. Other Civil Rights Offenses

In addition to the forms of sexual harassment described above, which are covered by Title IX, MPCC additionally prohibits the following offenses as forms of discrimination that may be within or outside of Title IX when the act is based upon the Complainant’s actual or perceived membership in a protected class.

- Sexual Exploitation, defined as: an individual taking non-consensual or abusive sexual advantage of another for their own benefit or for the benefit of anyone other than the person being exploited, and that conduct does not otherwise constitute sexual harassment under this Policy. Examples of Sexual Exploitation include, but are not limited to:
  - Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed)
  - Invasion of sexual privacy
  - Taking pictures, video, or audio recording of another in a sexual act, or in any other sexually-related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity; or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity; or disseminating sexual pictures

without the photographed person’s consent), including the making or posting of revenge pornography

- Prostituting another person
- Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually-transmitted disease (STD) or infection (STI), without informing the other person of the virus, disease, or infection
- Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person’s ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non- consensual sexual activity
- Misappropriation of another person’s identity on apps, websites, or other venues designed for dating or sexual connections
- Forcing a person to take an action against that person’s will by threatening to show, post, or share information, video, audio, or an image that depicts the person’s nudity or sexual activity
- Knowingly soliciting a minor for sexual activity
- Engaging in sex trafficking
- Knowing creation, possession, or dissemination of child pornography
- Threatening or causing physical harm; extreme verbal, emotional, or psychological abuse; or other conduct which threatens or endangers the health or safety of any person;
- Discrimination, defined as actions that deprive, limit, or deny other members of the community of educational or employment access, benefits, or opportunities, including disparate treatment;
- Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another;
- Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the MPCC community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity (as defined further in the Hazing Policy);
- Bullying, defined as:
  - Repeated and/or severe
  - Aggressive behavior
  - Likely to intimidate or intentionally hurt, control, or diminish another person, physically and/or mentally
  - That is not speech or conduct otherwise protected by the First Amendment.

Violation of any other MPCC policies may constitute a Civil Rights Offense when a violation is motivated by actual or perceived membership in a protected class, and the result is a discriminatory limitation or denial of employment or educational access, benefits, or opportunities.

Sanctions for the above-listed Civil Rights Offenses range from reprimand through expulsion/termination.

### **18. Retaliation**

Protected activity under this Policy includes reporting an incident that may implicate this policy, participating in the grievance process, supporting a Complainant or Respondent, assisting in providing information relevant to an investigation, and/or acting in good faith to oppose conduct that constitutes a violation of this Policy.

Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. MPCC will take all appropriate and available steps to protect individuals who fear that they may be subjected to retaliation.

MPCC and any member of MPCC's community are prohibited from taking or attempting to take materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy and procedure.

The exercise of rights protected under the First Amendment does not constitute retaliation.

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

### **19. Mandated Reporting**

All MPCC employees (faculty, staff, administrators) are expected to report actual or suspected discrimination, harassment, and/or retaliation to appropriate officials immediately, although there are some limited exceptions.

In order to make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On campus, some resources may maintain confidentiality and are not required to report actual or suspected discrimination or harassment in a way that identifies the parties. They may offer options and resources without any obligation to inform an outside agency or campus official unless a Complainant has requested the information be shared.

If a Complainant expects formal action in response to their allegations, reporting to any Mandated Reporter can connect them with resources to report crimes and/or policy violations, and these employees will immediately pass reports to the Title IX Coordinator (and/or police, if desired by the Complainant), who will take action when an incident is reported to them.

The following sections describe the reporting options at MPCC for a Complainant or third-party (including parents/guardians when appropriate):

#### **a. Confidential Resources**

If a Complainant would like the details of an incident to be kept confidential, the Complainant may speak with:

- On Campus Counselor
- Off-campus (non-employees):

- Licensed professional counselors and other medical providers
- Local rape crisis counselors
- Domestic violence resources
- Local or state assistance agencies
- Clergy/Chaplains
- Attorneys

All of the above-listed individuals will maintain confidentiality when acting under the scope of their licensure, professional ethics, professional credentials, or official designation, except in extreme cases of immediacy of threat or danger or abuse of a minor/elder/individual with a disability, or when required to disclose by law or court order.

Campus counselors and/or the Employee Assistance Program are available to help free of charge and may be consulted on an emergency basis during normal business hours.

*Employees who have confidential privilege as described above, and who receive reports within the scope of their confidential roles will timely submit anonymous statistical information for Clery Act purposes unless they believe it would be harmful to their client, patient, or parishioner.*

#### **b. Anonymous Notice to Mandated Reporters**

At the request of a Complainant, notice may be given by a Mandated Reporter to the Title IX Coordinator anonymously, without identification of the Complainant. The Mandated Reporter cannot remain anonymous themselves.

If a Complainant has requested that a Mandated Reporter maintain the Complainant's anonymity, the Mandated Reporter may do so unless it is reasonable to believe that a compelling threat to health or safety could exist. The Mandated Reporter can consult with the Title IX Coordinator on that assessment without revealing personally identifiable information.

Anonymous notice will be investigated by MPCC to the extent possible, both to assess the underlying allegation(s) and to determine if supportive measures or remedies can be provided. However, anonymous notice typically limits the MPCC's ability to investigate, respond, and provide remedies, depending on what information is shared.

When a Complainant has made a request for anonymity, the Complainant's personally identifiable information may be withheld by a Mandated Reporter, but all other details must be shared with the Title IX Coordinator. Mandated reporters may not be able to maintain requests for anonymity for Complainants who are minors, elderly, and/or disabled, depending on state reporting of abuse requirements.

#### **c. Mandated Reporters and Formal Notice/Complaints**

All employees of MPCC (including student employees), with the exception of those who are designated as Confidential Resources, are Mandated Reporters and must promptly share with the Title IX Coordinator all known details of a report made to them in the course of their employment.

Employees must also promptly share all details of behaviors under this Policy that they observe or have knowledge of, even if not reported to them by a Complainant or third-party.

Complainants may want to carefully consider whether they share personally identifiable details with non-confidential Mandated Reporters, as those details must be shared with the Title IX Coordinator.



Generally, disclosures in climate surveys, classroom writing assignments or discussions, human subjects research, or at events such as “Take Back the Night” marches or speak-outs do not provide notice that must be reported to the Coordinator by employees, unless the Complainant clearly indicates that they desire a report to be made or a seek a specific response from MPCC.

Supportive measures may be offered as the result of such disclosures without formal MPCC action.

Failure of a Mandated Reporter, as described above in this section, to report an incident of harassment or discrimination of which they become aware is a violation of MPCC Policy and can be subject to disciplinary action for failure to comply.

Though this may seem obvious, when a Mandated Reporter is engaged in harassment or other violations of this Policy, they still have a duty to report their own misconduct, though MPCC is technically not on notice simply because a harasser is also a Mandated Reporter unless the harasser does in fact report themselves.

Finally, it is important to clarify that a Mandated Reporter who is themselves a target of harassment or other misconduct under this Policy is not required to report their own experience, though they are, of course, encouraged to do so.

## **20. When a Complainant Does Not Wish to Proceed**

If a Complainant does not wish for their name to be shared, does not wish for an investigation to take place, and/or does not want a formal complaint to be pursued, they may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus and to comply with state or federal law.

The Title IX Coordinator has ultimate discretion over whether the MPCC proceeds when the Complainant does not wish to do so, and the Title IX Coordinator may sign a formal complaint to initiate a grievance process, usually upon completion of an appropriate violence risk assessment.

The Title IX Coordinator’s decision should be based on results of the violence risk assessment that show a compelling risk to health and/or safety that requires MPCC to pursue formal action to protect the community.

A compelling risk to health and/or safety may result from evidence of patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons, and/or violence. MPCC may be compelled to act on alleged employee misconduct irrespective of a Complainant’s wishes.

The Title IX Coordinator must also consider the effect that non-participation by the Complainant may have on the availability of evidence and the MPCC’s ability to pursue a Formal Grievance Process fairly and effectively.

When the Title IX Coordinator executes the written complaint, they do not become the Complainant. The Complainant is the individual who is alleged to be the victim of conduct that could constitute a violation of this Policy.

When MPCC proceeds, the Complainant (and/or their Advisor) may have as much or as little involvement in the process as they wish. The Complainant retains all rights of a Complainant under this Policy irrespective of their level of participation. Typically, when the Complainant chooses not to participate, the Advisor may be appointed as proxy for the Complainant throughout the process, acting to ensure and protect the

rights of the Complainant, though this does not extend to the provision of evidence or testimony.

Note that MPCC’s ability to remedy and respond to notice may be limited if the Complainant does not want MPCC to proceed with an investigation and/or grievance process. The goal is to provide the Complainant with as much control over the process as possible, while balancing MPCC’s obligation to protect its community.

In cases in which the Complainant requests confidentiality/no formal action and the circumstances allow MPCC to honor that request, MPCC may offer informal resolution options (see below), supportive measures, and remedies to the Complainant and the community, but will not otherwise pursue formal action.

If the Complainant elects to take no action, they can change that decision if they decide to pursue a formal complaint at a later date. Upon making a formal complaint, a Complainant has the right, and can expect, to have allegations taken seriously by MPCC and to have the incidents investigated and properly resolved through these procedures. Please consider that delays may cause limitations on access to evidence, or present issues with respect to the status of the parties.

## **21. Federal Timely Warning Obligations**

Parties reporting sexual assault, domestic violence, dating violence, and/or stalking should be aware that under the Clery Act, MPCC must issue timely warnings for reported incidents that pose a serious or continuing threat of bodily harm or danger to members of the campus community.

MPCC will ensure that a Complainant’s name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

## **22. False Allegations and Evidence**

Deliberately false and/or malicious accusations under this Policy are a serious offense and will be subject to appropriate disciplinary action. This does not include allegations that are made in good faith but are ultimately shown to be erroneous or do not result in a policy violation determination.

Additionally, witnesses and parties knowingly providing false evidence, tampering with or destroying evidence, or deliberately misleading an official conducting an investigation can be subject to discipline under appropriate MPCC policies.

## **23. Amnesty for Complainants and Witnesses**

The MPCC community encourages the reporting of misconduct and crimes by Complainants and witnesses. Sometimes, Complainants or witnesses are hesitant to report to MPCC officials or participate in grievance processes because they fear that they themselves may be in violation of certain policies, such as underage drinking or use of illicit drugs at the time of the incident. Respondents may hesitate to be forthcoming during the process for the same reasons.

It is in the best interests of the MPCC community that Complainants choose to report misconduct to MPCC officials, that witnesses come forward to share what they know, and that all parties be forthcoming during the process.

To encourage reporting and participation in the process, MPCC maintains a policy of offering parties and witnesses amnesty from minor policy

violations – such as underage consumption of alcohol or the use of illicit drugs – related to the incident.

Amnesty does not apply to more serious allegations such as physical abuse of another or illicit drug distribution. The decision not to offer amnesty is based on neither sex nor gender, but on the fact that collateral misconduct is typically addressed for all students within a progressive discipline system, and the rationale for amnesty – the incentive to report serious misconduct – is rarely applicable to Respondent with respect to a Complainant.

**Students:** Sometimes, students are hesitant to assist others for fear that they may get in trouble themselves (for example, an underage student who has been drinking or using marijuana might hesitate to help take an individual who has experienced sexual assault to the Police). Amnesty for Reporting Party and Witnesses: <https://nextcatalog.mpcc.edu/student-planner/code-conduct/judicial-incident-resolution-allegations-violations-harassment-sexual-misconduct-discrimination/> (<https://catalog.mpcc.edu/student-planner/code-conduct/judicial-incident-resolution-allegations-violations-harassment-sexual-misconduct-discrimination/>)

The MPCC maintains a policy of amnesty for students who offer help to others in need. Although policy violations cannot be overlooked, MPCC may provide purely educational options with no official disciplinary finding, rather than punitive sanctions, to those who offer their assistance to others in need.

**Employees:**<sup>19</sup> Sometimes, employees are hesitant to report harassment or discrimination they have experienced for fear that they may get in trouble themselves. For example, an employee who has violated the consensual relationship policy and is then assaulted in the course of that relationship might hesitate to report the incident to MPCC officials.

MPCC may, at its discretion, offer employee Complainants amnesty from such policy violations (typically more minor policy violations) related to the incident. Amnesty may also be granted to Respondents and witnesses on a case-by-case basis].

<sup>19</sup> Sometimes, employees are hesitant to report sexual harassment or retaliation they have experienced for fear that they may get in trouble themselves if their actions violate any MPCC policy.

## **24. Federal Statistical Reporting Obligations**

Certain campus officials – those deemed Campus Security Authorities – have a duty to report the following for federal statistical reporting purposes (Clery Act):

- a. All “primary crimes,” which include homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson;
- b. Hate crimes, which include any bias-motivated primary crime as well as any bias motivated larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property;
- c. VAWA-based crimes,<sup>20</sup> which include sexual assault, domestic violence, dating violence, and stalking; and
- d. Arrests and referrals for disciplinary action for weapons-related law violations, liquor-related law violations, and drug abuse-related law violations.

All personally identifiable information is kept private, but statistical information must be shared with campus security regarding the type of incident and its general location (on or off-campus or in the surrounding area, but no addresses are given) for publication in the Annual Security Report and daily campus crime log.

Campus Security Authorities include: student affairs/student conduct staff, campus security, local police, coaches, athletic directors, residence life staff, student activities staff, human resources staff, advisors to student organizations, and any other official with significant responsibility for student and campus activities.

<sup>20</sup> VAWA is the Violence Against Women Act, enacted in 1994 and codified in part at 42 U.S.C. sections 13701 through 14040.

## **25. Preservation of Evidence**

The preservation of evidence in incidents of sexual assault is critical to potential criminal prosecution and to obtaining restraining orders, and is particularly time-sensitive. MPCC will inform the Complainant of the importance of preserving evidence by taking the following actions:

1. Seek forensic medical assistance at the closest hospital, ideally within 120 hours of the incident (sooner is better).
2. Avoid showering, bathing, washing hands or face, or douching, if possible, but evidence may still be collected even if you do.
3. Try not to urinate.
4. If oral sexual contact took place, refrain from smoking, eating, drinking, or brushing teeth.
5. If clothes are changed, place soiled clothes in a paper bag (plastic destroys evidence) or secure evidence container available from Campus Security.
6. Seeking medical treatment can be essential even if it is not for the purposes of collecting forensic evidence.

During the initial meeting between the Complainant and the Title IX Coordinator or Deans of Student Life, the importance of taking these actions will be reiterated, if timely.

## **Interim Resolution Process<sup>21</sup> For Alleged Violations of the Policy on Equal Opportunity, Harassment and Nondiscrimination (known as Process A)**

### 1. Overview

MPCC will act on any formal or informal notice/complaint of violation of the Policy that is received by the Title IX Coordinator<sup>22</sup> or any other Official with Authority by applying these procedures, known as “Process A.”

The procedures below apply to all allegations of sexual harassment or retaliation involving students, staff, administrators, or faculty members. A set of technical dismissal requirements within the Title IX regulations may apply as described below, but when a technical dismissal under the Title IX allegations is required, any remaining allegations may proceed using these same grievance procedures, clarifying which policies above are applicable. Although the effect of the Title IX regulations can be confusing, these grievance procedures apply to all policies listed above.

Unionized/other categorized employees are subject to the terms of their agreements/employees’ rights to the extent those agreements do not conflict with federal or state compliance obligations.<sup>23</sup>

The procedures below may be used to address collateral misconduct 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. All other allegations of misconduct unrelated to incidents covered by the Policy will be addressed through procedures described in the student, faculty, and staff handbooks.

<sup>21</sup> For institutions with grievance processes enabling students and/or employees to challenge MPCC action, it is recommended that discrimination allegations be exempted from that process and replaced with the resolution process outlined here. Most existing grievance proceedings are neither equitable (by definition), nor are they sufficiently prompt to satisfy Title IX. Such a change may require negotiation with any affected union.

<sup>22</sup> Anywhere this procedure indicates "Title IX Coordinator," MPCC may substitute a trained designee.

<sup>23</sup> Consult with qualified legal counsel on the complex interaction between the regulations and union rights under collective bargaining agreements.

## **2. Notice/Complaint**

Upon receipt of a complaint or notice to the Title IX Coordinator of an alleged violation of the Policy, the Title IX Coordinator initiates a prompt initial assessment to determine the next steps the MPCC needs to take.

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

1. Offering supportive measures because the Complainant does not want to file a formal complaint; and/or
2. An informal resolution (upon submission of a formal complaint); and/or
3. A Formal Grievance Process including an investigation and a hearing (upon submission of a formal complaint).

MPCC uses the Formal Grievance Process to determine whether or not the Policy has been violated. If so, MPCC 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.

## **3. Initial Assessment**

Following receipt of notice or a complaint of an alleged violation of this Policy, the Title IX Coordinator<sup>24</sup> engages in an initial assessment, typically within one to five 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 because a 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 wishes, assesses their request(s), 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, 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.
- If a Formal Grievance Process is preferred by the Complainant, the Title IX Coordinator determines if the misconduct alleged falls within the scope of the 2020 Title IX regulations:
  - If it does, the Title IX Coordinator will initiate the formal investigation and grievance process, directing the investigation to address:
    - an incident, and/or
    - a pattern of alleged misconduct, and/or
    - a culture/climate issue, based on the nature of the complaint.
- If alleged misconduct does not fall within the scope of the 2020 Title IX regulations, the Title IX Coordinator determines that the regulations do not apply (and 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. Please note that dismissing a complaint under the 2020 Title IX regulations is solely a procedural requirement under Title IX which does not limit the MPCC's authority to address a complaint with an appropriate process and remedies.

<sup>24</sup> If circumstances require, the President or Title IX Coordinator will designate another person to oversee the resolution process should an allegation be made about the Coordinator or the Coordinator be otherwise unavailable, unable to fulfill their duties, or have a conflict of interest.

### **a. Violence Risk Assessment**

In many cases, the Title IX Coordinator may determine that a Violence Risk Assessment (VRA) should be conducted by the CARE Team as part of the initial assessment. A VRA can aid in ten critical and/or required determinations, including:

- Emergency removal of a Respondent on the basis of immediate threat to physical health/safety;
- Whether the Title IX Coordinator should pursue/sign a formal complaint absent a willing/able Complainant;
- Whether the scope of the investigation should include an incident, and/or pattern of misconduct, and/or climate of hostility/harassment;
- To help identify potential predatory conduct;
- To help assess/identify grooming behaviors;
- Whether it is reasonable to try to resolve a complaint through informal resolution, and what approach may be most successful;
- Whether to permit a voluntary withdrawal by the Respondent;

- Whether to impose transcript notation or communicate with a transfer Recipient about a Respondent;
- Assessment of appropriate sanctions/remedies (to be applied post-hearing); and/or
- Whether a Clery Act Timely Warning/No Trespass Order/No Contact Order/Interim Suspension 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.

VRAs require specific training and are typically conducted by psychologists, clinical counselors, social workers, case managers, law enforcement officers, student conduct officers, or other CARE Team. A VRA authorized by the Title IX Coordinator should occur in collaboration with CARE 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 (e.g., 5150 in California, Section XII in Massachusetts, Baker Act in Florida), 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.

More about MPCC's process for VRA can be found below in Appendix E.

#### b. Dismissal (Mandatory and Discretionary)<sup>25</sup>

MPCC 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 sexual harassment as defined above, even if proved; and/or
2. The conduct did not occur in an educational program or activity controlled by MPCC (including buildings or property controlled by recognized student organizations), and/or MPCC does not have control of the Respondent; and/or
3. The conduct did not occur against a person in the United States; and/or
4. At the time of filing a formal complaint, a Complainant is not participating in or attempting to participate in the education program or activity of the MPCC.<sup>26</sup>

<sup>25</sup> These dismissal requirements are mandated by the 2020 Title IX Regulations, 34 CFR §106.45

<sup>26</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.

MPCC 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; or

2. The Respondent is no longer enrolled in or employed by MPCC; or
3. Specific circumstances prevent MPCC 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, MPCC 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 below. The decision not to dismiss is also appealable by any party claiming that a dismissal is required or appropriate.

#### 4. Counterclaims

MPCC is obligated to ensure that the grievance process is not abused for retaliatory purposes. MPCC 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 by a Respondent may be made in good faith, but are on occasion made for purposes of retaliation, instead.

Counterclaims made with retaliatory intent will not be permitted.

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

Counterclaims may also be resolved through the same investigation as the underlying allegation, 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.

#### 5. Right to an Advisor

The parties may each have one 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.<sup>27</sup>

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).

<sup>27</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 monitor and implement sanctions.

##### **a. 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 MPCC 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



pool available from MPCC, the Advisor will have been trained by MPCC and be familiar with the MPCC's resolution process.

If the parties choose an Advisor from outside the pool of those identified by MPCC, the Advisor may not have been trained by MPCC and may not be familiar with MPCC's 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.

#### **b. 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.

MPCC 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, MPCC is not obligated to provide an attorney.

#### **c. Advisors in Hearings/ MPCC-Appointed Advisor**

Under U.S. Department of Education regulations for Title IX 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. If a party does not have an Advisor for a hearing, the MPCC will appoint a trained Advisor for the limited purpose of conducting any questioning of the other party and witnesses.

#### **d. Pre-Interview Meetings**

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

#### **e. Advisor Violations of MPCC Policy**

All Advisors are subject to the same MPCC policies and procedures, whether they are attorneys or not, and whether they are selected by a party or assigned by MPCC. Advisors are expected to advise their advisees without disrupting proceedings. Advisors should not address MPCC 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<sup>28</sup> 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 will be warned only once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting/interview/hearing will be ended, or other appropriate measures implemented. Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.

<sup>28</sup> Subject to the state law provisions or MPCC policy above.

#### **f. Sharing Information with the Advisor**

MPCC expects that the parties may wish to have MPCC share documentation and evidence related to the allegations with their Advisors. MPCC provides a consent form that authorizes MPCC 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 MPCC is able to share records with an Advisor.

If a party requests that all communication be made through their attorney Advisor, MPCC will only comply with that request at the discretion of the Title IX Coordinator.

Advisors appointed by the institution will not be asked to disclose details of their interactions with their advisees to institutional officials or Decision-makers.

#### **g. 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 MPCC. Advisors may be asked to sign Non-Disclosure Agreements (NDAs). MPCC may seek to restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by the MPCC's privacy expectations.

#### **h. Expectations of an Advisor**

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

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

#### **i. 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.

As a public entity, MPCC fully respects and accords the Weingarten rights of employees. For parties who are entitled to union representation, the MPCC will allow the unionized employee to have their union representative (if requested by the party) as well as an Advisor of their choice present for all resolution-related meetings and interviews. To uphold the principles of equity, the other party (regardless of union

membership) will also be permitted to have two Advisors. Witnesses are not permitted to have union representation or Advisors in grievance process interviews or meetings.

#### j. Assistance in Securing an Advisor

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

- FACE (<http://www.facecampusequality.org> (<http://www.facecampusequality.org/>))
- SAVE (<http://www.saveservices.org> (<http://www.saveservices.org/>)).

Complainants may wish to contact organizations such as:

- The Victim Rights Law Center (<http://www.victimrights.org> (<http://www.victimrights.org/>)),
- The National Center for Victims of Crime (<http://www.victimsofcrime.org> (<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/>

## 6. 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 MPCC 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, with the exception of information the parties agree not to disclose as part of an Informal Resolution, discussed below. MPCC encourages parties to discuss with their Advisors any sharing of information before doing so.

The Formal Grievance Process is MPCC's primary resolution approach, unless Informal Resolution is elected by all parties and MPCC. Three options for Informal Resolution are detailed in this section, and the Formal Grievance Process is detailed starting in the next section.

### a. Informal Resolution

- **Supportive Resolution.** When the Title IX Coordinator can resolve the matter informally by providing supportive measures (only) to remedy the situation.
- **Alternative Resolution.** When the parties agree to resolve the matter through an alternative resolution mechanism as described below, including mediation, restorative practices, etc., usually before a formal investigation takes place; see discussion in b., below.
- **Accepted Responsibility.** When the Respondent accepts responsibility for violating policy, and desires to accept a sanction(s) and end the resolution process; see discussion in c., below.

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 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.

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

MPCC 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 an allegation. All parties must consent to the use of an Alternative Resolution approach.

The Title IX Coordinator may look to 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, taking into account any power dynamics between the parties;
- The parties' motivation to participate;
- Civility of the parties;
- Results of a violence risk assessment/ongoing risk analysis;
- Disciplinary history;
- Whether an emergency removal is needed;
- Skill of the Alternative Resolution facilitator with this type of allegation;
- Complaint complexity;
- Emotional investment/capability of the parties;
- 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 to be made by the Title IX Coordinator. The Title IX Coordinator is authorized to negotiate a resolution that is acceptable to all parties, and/or to accept a resolution that is proposed by the parties, usually through their Advisors.

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. Results of complaints resolved by Informal Resolution or 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 and MPCC are able to agree on responsibility, sanctions, and/or remedies. If so, the Title IX Coordinator implements the accepted finding that the Respondent is in violation MPCC policy and implements agreed-upon sanctions and/or remedies, 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 terms of resolution. 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 or responsive actions are promptly implemented in order 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.

## **7. Formal Grievance Process**

The Formal Grievance Process relies on a pool of administrators<sup>29</sup> (“the Pool”) to carry out the process. Members of the Pool are announced in an annual distribution of this policy to all students, parents/guardians of students, employees, prospective students, and prospective employees. [They are also listed in the Annual Title IX Report published by the Title IX Office.

<sup>29</sup> External, trained third-party neutral professionals may also be used to serve in pool roles.

### **a. Pool Member Roles**

Members of the Pool are trained annually, and can serve in in the following roles, at the direction 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 Alternate Resolution if appropriately trained in appropriate resolution modalities (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<sup>30</sup>, 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 cases, MPCC 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.

<sup>30</sup> This does not preclude MPCC from having all members of the Pool go through an application and/or interview/selection process.

### **c. Pool Member Training**

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

- The scope of the MPCC’s Discrimination and Harassment Policy and Procedures
- How to conduct investigations and hearings 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
- How to implement appropriate and situation-specific remedies
- How to investigate in a thorough, reliable, timely, and impartial manner by individuals who receive annual training in conducting investigations of sexual harassment, trauma-informed practices, and impartiality
- 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 MPCC 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

Specific training is also provided for all Pool members. All Pool members are required to attend these trainings annually. The materials used to train all members of the Pool are publicly posted here: [insert link].

### **d. Pool Membership**

The Pool includes:

- 3 or more chairs: one representative Administrative Affairs, one from Academic Affairs, and one from Student Affairs, etc., who are members and who respectively Chair hearings for allegations involving student and employee Respondents
- 2 or more members of the Academic Affairs administration and/or faculty
- 2 or more members of the administration/staff

- 1 representative from Campus Safety
- 1 representative from Athletics

Pool members are usually appointed to three-year terms. Individuals who are interested in serving in the Pool are encouraged to contact the Title IX Coordinator.

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

The Title IX Coordinator may 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.

The NOIA may 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 MPCC 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 to inspect and review all directly related and/or relevant evidence obtained during the review and comment period,
- A statement about MPCC'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 the MPCC'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 interview process,
- A link to the MPCC's VAWA Brochure,
- 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, and
- 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 MPCC records, or emailed to the parties' MPCC-issued email or designated accounts. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

### **9. Resolution Timeline**

MPCC 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.

### **10. Appointment of Investigators**

Once the decision to commence a formal investigation is made, the Title IX Coordinator appoints Pool members to conduct the investigation typically using a team of two Investigators, usually within two (2) business days of determining that an investigation should proceed.

### **11. Ensuring Impartiality**

Any individual materially involved in the administration of the resolution process including the Title IX Coordinator, Investigator(s), and Decision-maker(s) 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 Pool member 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.

MPCC 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.

### **12. Investigation Timeline**

Investigations are completed expeditiously, normally within thirty (30) business days, though some investigations may take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc.

MPCC 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.

### **13. Delays in the Investigation Process and Interactions with Law Enforcement**

MPCC 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 accommodations for disabilities or health conditions.

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

MPCC action(s) or 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.

#### **14. Steps in the Investigation Process**

All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all 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. Recordings of interviews are not provided to the parties, but the parties may have the ability to review the transcript/summary of the interview once the investigation report is compiled. The transcript/summary may be redacted to ensure confidentiality.

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
- 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 all witnesses and the parties
- 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 Allegation (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 a member of the Pool 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 the parties of any meeting or interview involving the other 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 the other party and 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
- The Investigator(s) 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 MPCC 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 days. Each copy of the materials shared will be watermarked on each page with the role of the person receiving it (e.g., Complainant, Respondent, Complainant's Advisor, Respondent's Advisor).
- The Investigator(s) may 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
- The Investigator(s) will 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
- The Investigator(s) shares the report with the Title IX Coordinator and/or legal counsel for their review and feedback.
- The Investigator will incorporate any relevant feedback, and the final report is then shared 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

#### **15. Role and Participation of Witnesses in the Investigation**

Witnesses (as distinguished from the parties) who are employees of the MPCC are strongly encouraged to cooperate with and participate in MPCC's investigation and resolution process. Student witnesses and witnesses from outside the MPCC community are encouraged to cooperate with MPCC 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, 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.

MPCC 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. If a witness submits a written statement but does not intend to be and is not present for questioning at a hearing, their written statement may not be used as evidence.

### **16. Recording of Interviews**

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 should be made aware of and consent to<sup>31</sup> audio and/or video recording.

<sup>31</sup> Nebraska law allows any participant to a conversation to record the conversation without the consent of other participants. MPCC requests that any participant wishing to record any interviews advise all other participants of the recording.

### **17. Evidentiary Considerations in the Investigation**

The investigation does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; or 2) questions and evidence about the Complainant's sexual predisposition; or 3) questions 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 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.

### **18. 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 – unless all parties and the Decision-maker agree to an expedited timeline.

The Title IX Coordinator will select an appropriate Decision-maker or Decision-makers from the Pool depending on whether the Respondent is an employee or a student and provide a copy of the investigation report. Allegations involving student-employees in the context of their employment will be directed to the appropriate Decision-maker depending on the context and nature of the alleged misconduct.

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

MPCC will designate a single Decision-maker or a three-member panel from the Pool, at the discretion of the Title IX Coordinator. The single Decision-maker will also Chair the hearing. With a panel, one of the three members will be appointed as Chair by the Title IX Coordinator.

The Decision-maker(s) will not have had any previous involvement with the investigation. The Title IX Coordinator may elect to have an alternate from the Pool 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 or Chair 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 this facilitator role. The hearing will convene at a time and venue determined by the Chair or designee.

### **20. Evidentiary Considerations in the Hearing**

Any evidence that the Decision-maker(s) determine(s) is relevant may be considered. The hearing does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) questions and evidence about the Complainant's sexual predisposition; or 3) questions or 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 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. Previous disciplinary action of any kind involving the Respondent may be considered in determining an appropriate sanction upon a determination of responsibility, assuming MPCC 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 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 clear and convincing evidence; whether there is a high probability that the Respondent violated the Policy as alleged.

### **21. Notice of Hearing**

No less than ten (10) business days prior to the hearing<sup>32</sup>, the Title IX Coordinator or the 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 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) on the basis of 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.
- Information on how the hearing will be recorded and on access to the recording for the parties 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, and the party's or witness's testimony and any statements given prior to the hearing will not be considered by the Decision-maker(s). 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 do not have an Advisor, and MPCC will appoint one. Each party must have an Advisor present. There are no exceptions.
- A copy of all the materials provided to the Decision-maker(s) about the matter, unless they have been provided already.<sup>33</sup>
- An invitation to each party to submit to the Chair an impact 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 or 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 MPCC and remain within the 60-90 business day goal for resolution.

<sup>32</sup> Unless an expedited hearing is agreed to by all parties.

<sup>33</sup> The final investigation report may be shared using electronic means that preclude downloading, forwarding, or otherwise sharing

## **22. 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 or the Chair at least five (5) business days prior to the hearing.

The Title IX Coordinator or the Chair 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 or the Chair know at least five (5) business days prior to the hearing so that appropriate arrangements can be made.

## **23. Pre-Hearing Preparation**

After any necessary consultation with the parties, the Chair will provide the names of persons who will be participating 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 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.

The parties will be given a list of the names of the Decision-maker(s) at least five (5) 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 business days prior to the hearing. Decision-makers will only be removed if the Title IX Coordinator concludes that their bias or conflict of interest precludes an impartial hearing of the allegation(s).

The Title IX Coordinator will give the Decision-maker(s) a list of the names of all parties, witnesses, and Advisors at least five (5) 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.

## **24. 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) 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.

The Chair, **only** with full agreement of the parties, may decide in advance of the hearing that certain witnesses do not need to be present if their testimony can be adequately summarized by the Investigator(s) in the investigation report or during the hearing.

At each pre-hearing meeting with a party and 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/advisors, with all parties/advisors present at the same time, remotely, or as a paper-only exchange. The Chair will work with the parties to establish the format.

### **25. Hearing Procedures**

At the hearing, the Decision-maker(s) has 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 Policy on Equal Opportunity, Harassment, and Nondiscrimination.

Participants at the hearing will include the Chair, any additional panelists, the hearing facilitator, the Investigator(s) who conducted the investigation, the parties (or three (3) organizational representatives when an organization is the Respondent)<sup>34</sup>, 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.

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

<sup>34</sup> Subject to MPCC's Code of Organizational Conduct.

### **26. Joint Hearings**

In hearings involving more than one Respondent or in which two (2) or more Complainants have 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 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 with respect to each alleged policy violation.

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

The Chair explains the procedures and introduces the participants.

The Chair AND/OR hearing facilitator 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.<sup>35</sup> The hearing facilitator may attend to: logistics of rooms for various parties/witnesses as they wait; flow of parties/witnesses in and out of the hearing space; ensuring recording and/or virtual conferencing technology is working as intended; copying and distributing materials to participants, as appropriate, etc.

<sup>35</sup> If not conflicted out by previous involvement, the Title IX Coordinator may serve as the hearing facilitator/case manager.

### **28. Investigator Presents the Final Investigation Report**

The Investigator(s) will then 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.

### **29. Testimony and Questioning**

Once the Investigator(s) present(s) the report and are questioned, 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 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.



### **30. Refusal to Submit to Questioning; Inferences**

Cross-examination is an all or nothing proposition, meaning that if any relevant question is refused, no statements of that party or witness are admissible. Only if a party or witness is willing to submit to cross-examination, and answers all questions, will their statements prior to or at the hearing be fully admissible. If a party or witness chooses not to submit to cross-examination at the hearing, either because they do not attend the meeting, or they attend but refuse to participate in questioning, then the Decision-maker(s) may not rely on any prior statement made by that party or witness at the hearing (including those contained in the investigation report) in the ultimate determination of responsibility. The Decision-maker(s) must disregard all such statements. Evidence provided that is something other than a statement by the party or witness may be considered.

Whether a party or witness does or does not answer questions from the Decision-maker, their statements will be admissible as long as they are willing to submit to cross-examination questions, even if they are not asked such questions. The Decision-maker(s) may not draw any inference solely from a party's or witness's absence from the hearing or refusal to answer cross-examination or other questions.

If collateral charges of policy violations other than sexual harassment are considered at the same hearing, the Decision-maker(s) may consider all evidence it deems relevant, may rely on any relevant statement as long as the opportunity for questioning is afforded to all parties through their Advisors, and may draw reasonable inferences from any decision by any party or witness not to participate or respond to questions.

If a party's Advisor of choice refuses to comply with the MPCC's established rules of decorum for the hearing, MPCC may require the party to use a different Advisor. If a MPCC-provided Advisor refuses to comply with the rules of decorum, MPCC may provide that party with a different Advisor to conduct questioning on behalf of that party.

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.

### **31. Recording Hearings**

Hearings (but not deliberations) are recorded by MPCC 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 the MPCC will be permitted to listen to the recording or review a transcript of the recording in a controlled environment determined by the Title IX Coordinator, upon request. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator.

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

The Decision-maker(s) will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the policy violation(s) in question. If a panel is used, a simple majority vote is required to determine the finding. The clear and convincing evidence standard of proof is used. The hearing facilitator may be invited to attend

the deliberation by the Chair, but is there only to facilitate procedurally, not to address the substance of the allegations.

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 statements in determining appropriate sanction(s).

The Chair will ensure that each of the parties has an opportunity to review any impact statement submitted by the other party(ies). The Decision-maker(s) may – at their discretion – consider the statements, but they are not binding.

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

The Chair will then prepare a written deliberation statement and deliver it to the Title IX Coordinator, detailing the determination, rationale, the evidence used in support of its determination, the evidence not relied upon in its determination, credibility assessments, and any sanctions or recommendations.

This report is typically three (3) to five (5) pages in length and must be submitted to the Title IX Coordinator within two (2) business days of the end of deliberations, unless the Title IX Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will notify the parties.

### **33. 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, including the final determination, rationale, and any applicable sanction(s) with the parties and their Advisors within 5-7 business days of receiving the Decision-maker(s)' 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 MPCC records<sup>36</sup>, or emailed to the parties' MPCC-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 policy(ies) reported to have been violated, including the relevant policy section, and will contain a description of the procedural steps taken by MPCC 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 on 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 MPCC is permitted to share such information under state or federal law; any sanctions issued which MPCC is permitted to share according to state or federal law; and whether remedies will be provided to the Complainant to ensure access to the MPCC's educational or employment program or activity.

The Notice of Outcome will also include information on when the results are considered by the MPCC to be final, any changes that occur prior

to finalization, and the relevant procedures and bases for any available appeal options.

<sup>36</sup> Again, consider the confidentiality implications of sending mail to a home address.

#### **34. Statement of the Rights of the Parties (see Appendix C)**

#### **35. Sanctions**

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

- 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.

##### a. Student Sanctions

The following are the usual sanctions<sup>37</sup> that may be imposed upon students or organizations singly or in combination<sup>38</sup>:

- *Warning*: A formal statement that the conduct was unacceptable and a warning that further violation of any MPCC policy, procedure, or directive will result in more severe sanctions/responsive actions.
- *Required Counseling*: A mandate to meet with and engage in either MPCC-sponsored or external counseling to better comprehend the misconduct and its effects.
- *Probation*: A written reprimand for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the student or organization is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.
- *Suspension*: Termination of student status for a definite period of time not to exceed two years and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure as a student at MPCC. MPCC does not currently note suspension on transcripts.
- *Expulsion*: Permanent termination of student status and revocation of rights to be on campus for any reason or to attend MPCC -sponsored events. This sanction will

be noted permanently as a Conduct Expulsion on the student's official transcript. Expulsion is currently included on Transcripts.

- *Withholding Diploma*: MPCC may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities as a sanction if the student is found responsible for an alleged violation.
- *Revocation of Degree*: MPCC reserves the right to revoke a degree previously awarded from MPCC for fraud, misrepresentation, and/or other violation of MPCC policies, procedures, or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.
- *Organizational Sanctions*: Deactivation, loss of recognition, loss of some or all privileges (including MPCC registration) for a specified period of time.
- *Other Actions*: In addition to or in place of the above sanctions, MPCC may assign any other sanctions as deemed appropriate.

<sup>37</sup> MPCC policies on transcript notation will apply to these proceedings.

<sup>38</sup> Subject to MPCC's Organizational Code of Conduct.

##### b. Employee Sanctions/Responsive/Corrective Actions

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

- *Warning – Verbal or Written*
- *Performance Improvement Plan*
- *Enhanced supervision, observation, or review*
- *Required Counseling*
- *Required Training or Education*
- *Probation*
- *Loss of Oversight or Supervisory Responsibility*
- *Demotion*
- *Transfer*
- *Reassignment*
- *Assignment to new supervisor*
- *Restriction of stipends 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, MPCC may assign any other responsive actions as deemed appropriate.

#### **36. Withdrawal or Resignation While Charges 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 from MPCC, the resolution process ends with a dismissal, as MPCC no longer has disciplinary jurisdiction over the withdrawn student.

However, MPCC 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. The student who withdraws or leaves while the process is pending may not return to MPCC in any capacity. Admissions and Human Resources will be notified, accordingly. Such exclusion applies to all campuses of MPCC.

If the student Respondent only withdraws or takes a leave for a specified period of time (e.g., one semester or term), the resolution process may continue remotely and that student is not permitted to return to MPCC unless and until all sanctions, if any, have been satisfied.

b. Employees: Should an employee Respondent resign with unresolved allegations pending, the resolution process ends with dismissal, as MPCC no longer has disciplinary jurisdiction over the resigned employee.

However, MPCC 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 admission or rehire with MPCC or any campus of MPCC, and the records retained by the Title IX Coordinator will reflect that status.

### **37. Appeals**

Any party may file a request for appeal ("Request for Appeal"), but it must be submitted in writing to the Title IX Coordinator within three business days of the delivery of the Notice of Outcome.

A three-member appeal panel chosen from the Pool will be designated by the Title IX Coordinator OR a single Appeal Decision-maker will Chair the appeal. No appeal panelists or Decision-maker will have been involved in the process previously, including in any dismissal appeal that may have been heard earlier in the process. A voting Chair of the Appeal panel will be designated.

The Request for Appeal will be forwarded to the Appeal Chair 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:

- a. Procedural irregularity that affected the outcome of the matter;
- b. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- c. 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.

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 the other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker(s).

The other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker(s) will be mailed, emailed, and/or provided a hard copy of the request for an appeal with the approved grounds and then be given three 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 Chair to all parties for review and comment.

The non-appealing party (if any) may also choose to raise a new ground for 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 Investigator(s) and/or original Decision-maker(s), as necessary, who will submit their responses, if any, in three business days, which 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 will be shared with the Appeal Panel, and the Chair/Panel will render a decision in no more than three business days, barring exigent circumstances. All decisions are by majority vote and apply the clear and convincing evidence standard.

A Notice of Appeal Outcome will be sent to all parties simultaneously including the decision on each approved ground and rationale for each decision. The Notice of Appeal Outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanctions that may result which the MPCC is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent MPCC 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' MPCC-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 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 emergency removal procedures (detailed above) for a show cause meeting on the justification for doing so must be permitted within 48 hours of implementation.

If the original sanctions include separation in any form, MPCC may place a hold on official transcripts, diplomas, graduations, and course registration pending the outcome of an appeal. The Respondent may request a stay of these holds from the Title IX Coordinator within two

business days of the notice of sanctions. The request will be evaluated by the Title IX Coordinator or designee, whose determination is final.

### 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 decision, 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/Decision-maker(s) 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 Decision-maker(s) (as in cases of bias), the appeal Chair/Panel may order a new investigation with new investigators and/or a new hearing with a new Decision-maker(s).
- 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 in which the appeal results in reinstatement to MPCC 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.

### **38. 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 campus 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
- Referral to the Employee Assistance Program

- Education to the individual and/or the community
- Permanent alteration of housing assignments
- Permanent alteration of work arrangements for employees
- Provision of campus safety escorts
- Climate surveys
- Policy modification and/or training
- Provision of transportation accommodations
- 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.

When no policy violation is found, the Title IX Coordinator will address any remedies owed by MPCC to the Respondent to ensure no effective denial of educational access.

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

### **39. 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) (including the Appeal Chair/Panel).

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), including suspension, expulsion, and/or termination from MPCC.

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

### **40. Recordkeeping**

MPCC will maintain for a period of seven years 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 the MPCC'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. MPCC will make these training materials publicly available on MPCC's website ; and
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 the MPCC's education program or activity; and



- 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.
- MPCC will also maintain any and all records in accordance with state and federal laws<sup>39</sup>.

<sup>39</sup> In current procedure: records of all grievances, resolutions, and hearings will be kept by the Title IX/Equity/AA Coordinator indefinitely in the Title IX Coordinator database and, when involving College students, the Dean of Students will maintain in the Jenzabar Judicial Database. A model record maintenance and access policy is below in Appendix H.

#### **41. Disabilities Accommodations in the Resolution Process**

MPCC is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to the MPCC's resolution process.

Anyone needing such accommodations or support should contact the ADA Coordinator or Human Resources Director, if the individual is an employee, who will review the request and, in consultation with the person requesting the accommodation and the Title IX Coordinator, determine which accommodations are appropriate and necessary for full participation in the process.

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

This Policy and procedures supersede any previous policy(ies) 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. MPCC 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. The Title IX Coordinator may also vary procedures materially with notice on the institutional 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 procedures.

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.

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

This Policy and procedures are effective 8/14/2020.

#### **APPENDIX A: POLICY EXAMPLES**

Some examples of possible sexual harassment include:<sup>40</sup>

- A professor offers for a student to have sex or go on a date with them in exchange for a good grade. This constitutes sexual harassment regardless of whether the student accedes to the request and irrespective of whether a good grade is promised or a bad grade is threatened.

- A student repeatedly sends graphic, sexually-oriented jokes and pictures around campus via social media to hundreds of other students. Many don't find it funny and ask them to stop, but they do not. Because of these jokes, one student avoids the sender on campus and in the residence hall in which they both live, eventually asking to move to a different building and dropping a class they had together.
- A professor engages students in class in discussions about the students' past sexual experiences, yet the conversations are not in any way germane to the subject matter of the class. The professor inquires about explicit details and demands that students answer them, though the students are clearly uncomfortable and hesitant.
- An ex-partner widely spreads false stories about their sex life with their former partner to the clear discomfort and frustration of the former partner, turning the former partner into a social pariah on campus.
- Chris has recently transitioned from male to non-binary, but primarily expresses as a female. Since their transition, Chris has noticed that their African Studies professor, Dr. Mukembo, pays them a lot more attention. Chris is sexually attracted to Professor Mukembo and believes the attraction is mutual. Chris decides to act on the attraction. One day, Chris visits Dr. Mukembo during office hours, and after a long conversation about being non-binary, Chris kisses Dr. Mukembo. Dr. Mukembo is taken aback, stops the kiss, and tells Chris not to do that. Dr. Mukembo explains to Chris that they are not interested in Chris sexually or romantically. Chris takes it hard, crying to Dr. Mukembo about how hard it is to find someone who is interested in them now based on their sexual identity. Dr. Mukembo feels sorry for Chris and softens the blow by telling them that no matter whether they like Chris or not, faculty-student relationships are prohibited by the university. Chris takes this as encouragement. One night, Chris goes to a gay bar some distance from campus and sees Dr. Mukembo there. Chris tries to buy Dr. Mukembo a drink and, again, tries to kiss Dr. Mukembo. Dr. Mukembo leaves the bar abruptly. The next day, Chris makes several online posts that out Dr. Mukembo as gay and raise questions about whether they are sexually involved with students. Dr. Mukembo contacts the Title IX Office and alleges that Chris is sexually harassing him.

<sup>40</sup> ATIXA recommends incorporation of examples into policy as an educational and preventive tool. Some campuses may prefer to break these out into separate documents or resources.

#### **Examples of Stalking**

- Students A and B were "friends with benefits." Student A wanted a more serious relationship, which caused student B to break it off. Student A could not let go and pursued student B relentlessly. Student B obtained a campus no-contact order. Subsequently, Student B discovered their social media accounts were being accessed, and things were being posted and messaged as if they were from them, but they were not. Whoever accessed their account posted a picture of a penis, making it look as if Student B had sent out a picture of themselves, though it was not their penis. This caused them considerable embarrassment and social anxiety. They changed their passwords, only to have it happen again. Seeking help from the Title IX Coordinator, Student B met with the IT department, which discovered an app on their phone and a keystroke recorder on

their laptop, both of which were being used to transmit their data to a third party.

- A graduate student working as an on-campus tutor received flowers and gifts delivered to their office. After learning the gifts were from a student they recently tutored, the graduate student thanked the student and stated that it was not necessary and would appreciate it if the gift deliveries stopped. The student then started leaving notes of love and gratitude on the tutor's car, both on-campus and at home. Asked again to stop, the student stated by email, "You can ask me to stop, but I'm not giving up. We are meant to be together, and I'll do anything to make you have the feelings for me that I have for you." When the tutor did not respond, the student emailed again, "You cannot escape me. I will track you to the ends of the earth. If I can't have you, no one will."

#### Examples of Sexual Assault:

- Amanda and Bill meet at a party. They spend the evening dancing and getting to know each other. Bill convinces Amanda to come up to his room. From 11:00 p.m. until 3:00 a.m., Bill uses every line he can think of to convince Amanda to have sex with him, but she adamantly refuses. Despite her clear communications that she is not interested in doing anything sexual with him, Bill keeps at her, questions her religious convictions, and accuses her of being "a prude." He brings up several rumors that he has heard about how she performed oral sex on a number of other guys. Finally, it seems to Bill that her resolve is weakening, and he convinces her to "jerk him off" (hand to genital contact). Amanda would have never done it but for Bill's incessant coercion.
- Jiang is a junior. Beth is a sophomore. Jiang comes to Beth's residence hall room with some mutual friends to watch a movie. Jiang and Beth, who have never met before, are attracted to each other. After the movie, everyone leaves, and Jiang and Beth are alone. They hit it off, soon become more intimate, and start to make out. Jiang verbally expresses his desire to have sex with Beth. Beth, who was abused by a babysitter at the age of five and avoids sexual relations as a result, is shocked at how quickly things are progressing. As Jiang takes her by the wrist over to the bed, lays her down, undresses her, and begins to have intercourse with Beth, Beth has a severe flashback to her childhood trauma. She wants to tell Jiang to stop but cannot. Beth is stiff and unresponsive during the intercourse.
- Kevin and John are at a party. Kevin is not sure how much John has been drinking, but he is pretty sure it's a lot. After the party, he walks John to his apartment, and John comes on to Kevin, initiating sexual activity. Kevin asks John if he is really up to this, and John says yes. They remove each other's clothes, and they end up in John's bed. Suddenly, John runs for the bathroom. When he returns, his face is pale, and Kevin thinks he may have thrown up. John gets back into bed, and they begin to have sexual intercourse. Kevin is having a good time, though he can't help but notice that John seems pretty groggy and passive, and he thinks John may have even passed out briefly during the sex, but he came to again. When Kevin runs into John the next day, he thanks him for the great night. John remembers nothing and decides to make a report to the Dean.

#### Examples of Retaliation:

- Student-athlete A alleges sexual harassment by a coach; the coach subsequently cuts the student-athlete's playing time without a legitimate justification.
- A faculty member alleges gender inequity in pay within her department; the Department Chair then revokes approval for the faculty member to attend a national conference, citing the faculty member's tendency to "ruffle feathers."
- A student from Organization A participates in a sexual harassment investigation as a witness whose testimony is damaging to the Respondent, who is also a member of Organization A; the student is subsequently removed as a member of Organization A because of their participation in the investigation.

#### Appendix C: Statement of Rights of the Parties

- The right to an equitable investigation and resolution of all credible allegations of prohibited harassment, discrimination, and/or retaliation made in good faith to MPCC officials.
- 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 by MPCC regarding the allegation(s) or underlying incident(s), whenever possible.
- The right not to have any personally identifiable information released by MPCC to the public without consent provided, except to the extent permitted by law.
- The right to be treated with respect by MPCC officials.
- The right to have MPCC Policy and these procedures followed without material deviation.
- The right not to be pressured to mediate or otherwise informally resolve any reported misconduct involving violence, including sexual violence.
- The right not to be discouraged by MPCC officials from reporting sexual harassment, discrimination, and/or retaliation to both on-campus and off-campus authorities.
- The right to be informed by MPCC officials of options to notify proper law enforcement authorities, including on-campus and local police, and the option(s) to be assisted by the MPCC in notifying such authorities, if the party so chooses. This also includes the right not to be pressured to report.
- The right to have allegations of violations of this Policy responded to promptly and with sensitivity by MPCC Security Staff and/or other MPCC officials.
- The right to be informed of available supportive measures, such as counseling; advocacy; student financial aid, or other services, both on campus and in the community.

- The right to a MPCC -implemented no-contact order or a no-trespass order against a non- affiliated third party when a person has engaged in or threatens to engage in stalking, threatening, harassing, or other improper conduct.
- The right to be informed of available assistance in changing academic, living, and/or working situations after an alleged incident of sexual harassment and/or retaliation, if such changes are reasonably available. No formal report, or investigation, either campus or criminal, needs to occur before this option is available. Such actions may include, but are not limited to:
  - Relocating an on-campus student's housing to a different on-campus location
  - Assistance from MPCC staff in completing the relocation
  - Changing an employee's work environment (e.g., reporting structure, office/workspace relocation)
  - Transportation accommodations
  - Visa/immigration assistance
  - Arranging to dissolve a housing contract and a pro-rated refund
  - Exam, paper, and/or assignment rescheduling or adjustment
  - Receiving an incomplete in, or a withdrawal from, a class (may be retroactive)
  - Transferring class sections
  - Temporary withdrawal/leave of absence (may be retroactive)
  - Campus safety escorts
  - Alternative course completion options.

The right to have MPCC maintain such actions for as long as necessary and for supportive measures to remain private, provided privacy does not impair MPCC's ability to provide the supportive measures.

The right to receive sufficiently advanced, written notice of any meeting or interview involving the other party, when possible.

The right to have the Investigator(s), Advisors, and/or Decision-maker(s) identify and question relevant available 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)/Decision-maker(s), may be asked of any party or witness.

The right to have inadmissible prior sexual predisposition/history or irrelevant character evidence excluded by the decision-maker.

The right to know the relevant and directly related evidence obtained and to respond to that evidence.

The right to a 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 receive a copy of all relevant and directly related evidence obtained by the investigation, subject to privacy limitations imposed by state and federal law, and a ten (10) business day period to review and comment on the evidence.

The right to receive a copy of the final investigation report, including all factual, policy, and/or credibility analyses performed, and to have at least ten (10) business days to review and comment on the report prior to the hearing.

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 regular updates on the status of the investigation and/or resolution.

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 a Hearing Panel that is not single-sex in its composition, if a panel is used.

The right to preservation of confidentiality/privacy, to the extent possible and permitted by law.

The right to meetings, interviews, and/or hearings that are closed to the public.

The right to petition that any MPCC representative in the process be recused on the basis of disqualifying bias and/or conflict of interest.

The right to have an Advisor of their choice to accompany and assist the party in all meetings and/or interviews associated with the resolution process.

The right to the use of the appropriate standard of evidence, clear and convincing evidence to make a finding after an objective evaluation of all relevant evidence.

The right to be present, including presence via remote technology, during all testimony given and evidence presented during any formal grievance hearing.

The right to have an impact statement considered by the Decision-maker(s) following a determination of responsibility for any allegation, but prior to sanctioning.

The right to be promptly informed in a written Notice of Outcome letter of the finding(s) and sanction(s) of the resolution process (if any) and a detailed rationale of the decision (including an explanation of how credibility was assessed), delivered simultaneously (without undue delay) to the parties.

The right to be informed in writing of when a decision by MPCC is considered final and any changes to the final determination or sanction(s) that occur post Notification of Outcome.

The right to be informed of the opportunity to appeal the finding(s) and sanction(s) of the resolution process, and the procedures for doing so in accordance with the standards for appeal established by MPCC.

The right to a fundamentally fair resolution as defined in these procedures.

#### **Appendix D: MODEL UNETHICAL RELATIONSHIPS POLICY**

##### **EXPECTATIONS REGARDING UNETHICAL RELATIONSHIPS<sup>41</sup>**

There are inherent risks in any romantic or sexual relationship between individuals in unequal positions (such as faculty member and student or supervisor and employee). These relationships may, in reality, be less consensual than perceived by the individual whose position confers power or authority. Similarly, the relationship also may be viewed in different ways by each of the parties, particularly in retrospect.

Circumstances may change, and conduct that was once welcome may, at some point in the relationship, become unwelcome.

Even when both parties have initially consented to romantic or sexual involvement, the possibility of a later allegation of a relevant Policy violation still exists. MPCC does not wish to interfere with private choices regarding personal relationships when these relationships do not interfere with the goals and policies of MPCC. However, for the personal protection of members of this community, relationships in which power differentials are inherent (e.g., faculty-student, staff-student) are generally discouraged. They may also violate standards of professionalism and/or professional ethics.

Consensual romantic or sexual relationships in which one party maintains a direct supervisory or otherwise evaluative role over the other party are inherently problematic. Therefore, persons with direct supervisory or otherwise evaluative responsibilities who are involved in such relationships must bring these relationships to the timely attention of their supervisor and/or the Title IX Coordinator. The existence of this type of relationship will likely result in removing the supervisory or evaluative responsibilities from the employee or shifting a party from being supervised or evaluated by someone with whom they have established a consensual relationship. When an affected relationship existed prior to adoption of this policy, the duty to notify the appropriate supervisor still pertains.

This type of relationship includes Residence Life Assistant's (RLA's), Resident Advisors (RAs), and students over whom the RLA or RA has direct responsibility. While no relationships are specifically prohibited by this policy, failure to timely self-report such relationships to a supervisor as required can result in disciplinary action for an employee. The Title IX Coordinator will determine whether to refer violations of this provision to Human Resources for resolution, or to pursue resolution under this Policy, based on the circumstances of the allegation.

<sup>41</sup> This section is offered as an optional inclusion, as some campuses prefer to include this policy elsewhere, such as a faculty handbook or employee manual. We include it here to inform students, not just employees, of our expectations. Regardless, violation of this policy is a Human Resources/Employee Relations matter and should not be addressed under this resolution process unless the elements of the definition of harassment are met.

#### **Appendix E: Violence Risk Assessment (VRA)**

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

**The implementation of VRAs require specific training and are typically conducted by psychologists, clinical counselors, social workers, case managers, law enforcement officers, student conduct officers, and/or other CARE Team members.**

**A VRA occurs in collaboration with the CIIT, CARE, and/or threat assessment team and must be understood as an on-going process, rather than a singular evaluation or meeting. A VRA is not an evaluation for an involuntary behavioral health hospitalization (e.g., 5150 in California, Section XII in Massachusetts, Baker Act in Florida), 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.**

**When conducting a VRA, the assessor(s) use an evidence-based process consisting of:**

1. an appraisal of *risk factors* that escalate the potential for violence;
2. a determination of *stabilizing influences* that reduce the risk of violence;
3. a contextual *analysis of violence risk* by considering environmental circumstances, hopelessness, and suicidality; catalyst events; nature and actionability of threat; fixation and focus on target; grievance collection; and action and time imperative for violence; and
4. the application of *intervention and management* approaches to reduce the risk of violence.

To assess an individual's level of violence risk, the Title IX Coordinator will initiate the violence risk assessment process through the CARE Team. The CARE Team will assign a trained individual(s) to perform the assessment, according to the specific nature of the Title IX case.

The assessor(s) will follow the process for conducting a violence risk assessment as outlined in the CARE Team manual and will rely on a consistent, research-based, reliable system that allows for the evaluation of the risk levels.

Some examples of formalized approaches to the VRA process include: The NaBITA Risk Rubric,<sup>42</sup> The Structured Interview for Violence Risk Assessment (SIVRA-35),<sup>43</sup> The Extremist Risk Intervention Scale (ERIS),<sup>44</sup> Looking Glass,<sup>45</sup> Workplace Assessment of Violence Risk (WAVR-21),<sup>46</sup> Historical Clinical Risk Management (HCR-20),<sup>47</sup> and MOSAIC.<sup>48</sup>

The VRA is conducted independently from the Title IX process, informed by it but free from outcome pressure. The individual(s) conducting the assessment will be trained to mitigate any bias and provide the analysis and findings in a fair and equitable manner.

The CARE Team or threat team's member(s) conducts a VRA process and makes a recommendation to the Title IX Coordinator as to whether the VRA indicates there is a substantial, compelling, and/or immediate risk to the health and/or safety of an individual or the community.

<sup>42</sup> <https://www.nabita.org/>



<sup>43</sup> [www.nabita.org/resources/assessment-tools/sivra-35/](http://www.nabita.org/resources/assessment-tools/sivra-35/)  
(<https://www.nabita.org/resources/assessment-tools/sivra-35/>)

<sup>44</sup> [www.nabita.org/resources/assessment-tools/eris/](http://www.nabita.org/resources/assessment-tools/eris/) (<https://www.nabita.org/resources/assessment-tools/eris/>)

<sup>45</sup> [www.nabita.org/looking-glass](http://www.nabita.org/looking-glass) (<http://www.nabita.org/looking-glass/>)

<sup>46</sup> [www.wavr21.com](http://www.wavr21.com) (<http://www.wavr21.com/>)

<sup>47</sup> [hcr-20.com](http://hcr-20.com) (<http://hcr-20.com/>)

<sup>48</sup> [www.mosaicmethod.com](http://www.mosaicmethod.com) (<http://www.mosaicmethod.com/>)

#### **APPENDIX G: Title IX Policy Statement Template**

**MPCC adheres to all federal, state, and local civil rights laws prohibiting discrimination in employment and education. MPCC does not discriminate in its admissions practices, in its employment practices, or in its educational programs or activities on the basis of sex/gender. As a recipient of federal financial assistance for education activities, MPCC is required by Title IX of the Education Amendments of 1972 to ensure that all of its education programs and activities do not discriminate on the basis of sex/gender. Sex includes sex, sex stereotypes, gender identity, gender expression, sexual orientation, and pregnancy or parenting status.**

**MPCC also prohibits retaliation against any person opposing discrimination or participating in any discrimination investigation or complaint process internal or external to the institution. Sexual harassment, sexual assault, dating and domestic violence, and stalking are forms of sex discrimination, which are prohibited under Title IX and by MPCC policy.**

**Any member of the campus community, guest, or visitor who acts to deny, deprive, or limit the educational, employment, residential, or social access, opportunities and/or benefits of any member of the MPCC community on the basis of sex is in violation of The Board of Governors Policy 8200, Equal Opportunity. 1800 (mpcc.edu) (<http://www.mpcc.edu/about-mpcc/board-of-governors-01/BoardMeetingPolicyManual/Section%2008-Federal%20State%20Related%20Required%20Policies.pdf>)**

**Any person may report sex discrimination (whether or not the person reporting is the person alleged to have experienced the conduct), in person, by mail, by telephone, by video, or by email, using the contact information listed for the Title IX Coordinator (below). A report may be made at any time (including during non-business hours) by using the telephone number or email address, or by mail to the office address, listed for the Title IX Coordinator or any other official listed.**

**Report online, using the reporting form posted at <http://www.mpcc.edu/current-students/report-an-incident.php>. (<http://www.mpcc.edu/about-mpcc/general-information/incident-report/>) Click on the "Make a Report" Button. Anonymous reports are accepted but can give rise to a need to investigate. MPCC tries to provide supportive measures to all Complainants, which is impossible with an anonymous report. Because reporting carries no obligation to initiate a formal response, and as MPCC respects Complainant requests to dismiss complaints unless there is a compelling threat to health and/or safety, the Complainant is largely in control and should not fear a loss of privacy by making a report that allows MPCC to discuss and/or provide supportive measures.**

**Questions regarding Title IX, including its application and/or concerns about noncompliance, should be directed to the Title IX Coordinator. For a complete copy of the policy or for more information, please visit [www.mpcc.edu](http://www.mpcc.edu) (<http://www.mpcc.edu/>) or contact the Title IX Coordinator.**

**Individuals who believe they have experienced sex discrimination, harassment, and/or retaliation in violation of MPCC policy should contact the following:**

Rebecca Wrage | Title IX /ADA Coordinator | Director of Human Resources | 1101 Halligan Dr., North Platte 69101 (308) 535-3679 | Email: [wrager@mpcc.edu](mailto:wrager@mpcc.edu)

Kelly Rippen | McCook Campus Vice President | 1205 East 3<sup>rd</sup> Street, McCook, NE 69001 (308) 345-8107 | Email: rippenk@mpcc.edu

MPCC has determined that the following administrators are Officials with Authority to address and correct sexual harassment and/or retaliation. In addition to the Title IX Team members listed above, these Officials with Authority listed below may also accept notice or complaints on behalf of MPCC:

Dr. Brian Obert | Dean of Student Life | 1205 East 3<sup>rd</sup> Street, McCook, NE 69001 | (308) 345-8109 | Email: obertb@mpcc.edu

Jason Osmotherly | Associate Dean of Student Life | 1101 Halligan Dr. 400 WWWood Bldg (North Campus) North Platte, NE 69101 | (308) 535-3635 | Email: osmotherlyj@mpcc.edu

MPCC has also classified all employees as Mandated Reporters of any knowledge they have that a member of the community is experiencing sexual harassment and/or retaliation.

A person may also file a complaint with the appropriate federal, state, or local agency within the time frame required by law. Depending upon the nature of the complaint, the appropriate agency may be the federal Equal Employment Opportunity Commission (EEOC), Office for Civil Rights (OCR) of the U.S. Department of Education, the Department of Justice, and/or the appropriate state agency.

Inquiries may be made externally to:

Office for Civil Rights (OCR) | Equal Employment Opportunity Commission (EEOC) | U.S. Department of Education | 400 Maryland Avenue, SW | Washington, DC 20202-1100 | TDD#: (877) 521-2172 | Email: OCR@ed.gov | Contact: <https://www.eeoc.gov/contact-eeoc> (<https://www.eeoc.gov/contact-eeoc/>)

Mid-Plains Community College is under the Kansas City Area EEOC Office:

Customer Service Hotline #: (800) 421-3481 | Location: Gateway Tower II | Facsimile: (202) 453-6012 | 400 State Ave., Suite 905 Kansas City, KS 66101 | Phone: 1-800-669-4000 Web: <http://www.ed.gov/ocr> (<http://www.ed.gov/ocr/>)

For complaints involving employees: <https://www.eeoc.gov/contact-eeoc> (<https://www.eeoc.gov/contact-eeoc/>)(EEOC)<sup>49</sup>

Within any resolution process related to this policy, MPCC provides reasonable accommodations to persons with disabilities and religious accommodations, when that accommodation is consistent with state and federal law.

Short/Blurb Format:

MPCC does not discriminate in its employment practices or in its educational programs or activities on the basis of sex/gender.[2] MPCC also prohibits retaliation against any person opposing discrimination or participating in any discrimination investigation or complaint process internally or externally. Reports of misconduct, questions regarding Title IX, and concerns about noncompliance should be directed to the Title IX Coordinator. For a complete copy of the policy or for more information, please contact the Title IX Coordinator or the Assistant Secretary of Education within the Office for Civil Rights (OCR).

<sup>49</sup> EEOC has jurisdiction over Title IX employment claims. Mid-Plains Community College is under the Kansas City Area EEOC Office. 1-800-669-4000.

## Appendix H: ATIXA Record Maintenance and Access Policy

### Policy Scope

**This policy covers records maintained in any medium that are created pursuant to the College's Title IX Policy and/or the regular business of the College's Title IX Office. All such records are considered private or confidential by the Title IX Office, in accordance with FERPA and the directive from the Department of Education to maintain the confidentiality of records related to Title IX. These records may be shared internally with those who have a legitimate educational interest, and will be shared with the parties to a complaint under applicable state and/or federal law, including the 2020 Title IX regulations, FERPA, and/or the Clery Act/VAWA §304. The Title IX Office controls the dissemination and sharing of any records under its control.**

### Types of Records Covered Under this Policy

**Records Pertaining to the Grievance-Resolution Process. These records include, but are not limited to:**

- Documentation of notice to the institution including incident reports;
- Anonymous reports later linked to a specific incident involving known parties;
- Any documentation supporting the initial assessment;
- Investigation-related evidence (e.g., physical and documentary evidence collected and interview transcripts);
- Dismissal-related documentation;
- Documentation related to the grievance resolution process;
- The final investigative report;
- Remedy-related documentation;
- Supportive measures-related documentation;
- Hearing recordings and records;
- Appeal-related documentation;
- Informal resolution records;
- Notices of Outcome;
- Records documenting that the College's response was not deliberately indifferent;
- Any other records typically maintained by the College as part of the case file.

Specific examples of records pertaining to the grievance resolution process may include, but are not limited to: anonymous reports later identified; intake documentation; incident reports; the written complaint; the names of the Complainant, the Respondent; any witnesses; any relevant statements or other evidence obtained; interview notes or transcripts; timelines, flowcharts and other forms used in the investigation process; witness lists, correspondence, telephone logs, evidence logs and other documents related to the processing of an investigation; correspondence relating to the substance of the investigation; supportive measures implemented on behalf of the Complainant or Respondent; actions taken to restrict/remove the Respondent; correspondence with the parties; medical, mental-health, medical, and forensic record evidence obtained with consent during the course of the investigation; police reports; expert sources used in consideration of the evidence; documentation of outcome and rationale; correspondence and documentation of the appeals process; documentation of any sanctions/discipline resulting from the grievance

resolution process; and documentation of reported retaliatory behavior as well as all actions taken to address these reports.

**Drafts and Working Files:** Preliminary drafts and “working files” are *not* considered records that must be maintained by the College, and these are typically destroyed during the course of an investigation or at its conclusion. They are preliminary versions of records and other documents that do not state a final position on the subject matter reviewed or are not considered to be in final form by their creator and/or the Title IX Coordinator. An example of a “working file” would be the investigator notes made during one interview with topics the investigator wants to revisit in subsequent interviews. Sole possession records maintained as such in accordance with FERPA are also included in this category. All drafts of investigation reports shared with the parties are maintained.

**Attorney Work-Product:** Communications from the Title IX Office or its designees with the College’s legal counsel may be work product protected by attorney-client privilege. These communications are not considered records to be maintained by the Title IX Office or accessible under this policy unless the Title IX Coordinator, in consultation with legal counsel as necessary, determines that these communications should be included as accessible records.

**Record Storage:**

Records may be created and maintained in different media formats; this policy applies to all records, irrespective of format. All records created pursuant to the Policy, as defined above, must be stored in database, digital and/or paper format. The complete file must be transferred to the Title IX Portal Storage within fourteen (14) days of resolution of the complaint (including any appeal), if the file is not maintained within the Title IX Office already. Security protocols must be in place to preserve the integrity and privacy of any parts of any record that are maintained in the Title IX Office during the pendency of an investigation.

The Title IX Office will store all records created pursuant to the Policy, regardless of the identities of the parties. In current procedure: records of all grievances, resolutions, and hearings will be kept by the Title IX/Equity/AA Coordinator indefinitely in the Title IX Coordinator database and, when involving College students, the Dean of Students will maintain in the Jenzabar Judicial Database.) Any extra (non-essential) copies of the records (both digital and paper) must be destroyed.

A copy of records showing compliance with Clery Act requirements by Title IX personnel will be maintained along with the case file in the Dean of Student Life Office and in a separate aggregate annual Clery Act composite file, as well.

College will maintain an access log of each case file, showing when and by whom it was accessed, and for what purpose.

**Record Retention:**

All records created and maintained pursuant to the Policy must be retained for seven years by the Title IX Office in database, digital, and/or paper form, unless destruction or expungement is authorized by the Title IX Coordinator, who may act under their own discretion, or in accordance with a duly executed and binding settlement of claim, and/or by court or government order.

**Record Access:**

Access to records created pursuant to the Policy or housed in the Title IX Office is strictly limited to the Title IX Coordinator and any individual

the Coordinator authorizes, at their discretion or via permission levels within the database. The MPCC President, MCC Vice-President, Asst. HR Director, and Deans of Student Life are permanently approved authorizations into policy or in a separately maintained document. Those who are granted broad access to the records of the Title IX Office are expected to only access records pertinent to their scope or work or specific assignment. Anyone who accesses such records without proper authorization may be subject to an investigation and possible discipline/sanction. The discipline/sanction for unauthorized access of records covered by this policy will be at the discretion of the appropriate disciplinary authority, consistent with other relevant College policies and procedures.

The parties may request access to their case file. The College will provide access or a copy within 45 business days of the request. Appropriate redactions of personally identifiable information may be made before inspection or any copy is shared.

During the investigation, materials may be shared with the parties using secure file transmission software. Any such file will be watermarked by the Title IX Office before being shared, with the watermark identifying the role of the recipient in the process (Complainant, Respondent, Hearing Decision-maker; Complainant’s Advisor, etc.).

**Record Expungement:**

Expulsion is currently included on Transcripts.

**Record Security:**

The Title IX Coordinator is expected to maintain appropriate security practices for all records, including password protection, lock and key, and other barriers to access as appropriate. Record security should include protection from flood, fire, and other potential emergencies. Clothing, forensic, and other physical evidence should be securely stored in either the Title IX Office, The Deans of Student Life Office, and/or with Campus Security or law enforcement entity. All physical evidence will be maintained in a facility that is reasonably protected from flood and fire. A catalogue of all physical evidence will be retained with the case file.