



2.21P Title IX Grievance Procedure

Category: Administration

Name of Responsible Office: Diversity, Equity, and Belonging

Title of Responsible Executive: Vice President, Diversity-Equity-Belonging and Executive Director, MCC Downtown Campus

Date Established: August 10, 2020

Date Last Approved:

Description of Procedure

Filing a Formal Complaint

The timeframe for the Title IX Grievance Procedure begins with the filing of a Formal Complaint. The Grievance Procedure will be concluded in a reasonably prompt manner. Monroe Community College strives to review and resolve complaints in a timely and thorough manner. Typically, this can take 60-90 business days after the filing of the Formal Complaint, provided that the procedure may be extended for a good reason, including but not limited to the unavailability or absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities. The procedure for applying for extensions is described below.

To file a Formal Complaint, a complainant must provide the Title IX Coordinator a written, signed complaint describing the facts alleged. Complainants are only able to file a Formal Complaint under this policy if they are currently participating in, or attempting to participate in, the education programs or activities of Monroe Community College, including as an employee. For complainants who do not meet this criteria, the college will utilize existing policy in the [Monroe Community College Student Code of Conduct and NYS 129B Sexual Misconduct Policy](#), the Sexual Harassment Response and Prevention Policy and the Sexual Harassment Complaint and Investigation Procedure (both of which can be viewed on the [MCC Policy webpage](#)).

If a complainant does not wish to make a Formal Complaint, the Title IX Coordinator may determine a Formal Complaint is necessary. Monroe Community College will inform the complainant of this decision in writing and the complainant need not participate in the process further but will receive all notices issued under this policy and process.

Nothing in the Title IX Grievance Policy or the *Student Code of Conduct* prevents a complainant from seeking the assistance of state or local law enforcement alongside the appropriate on-campus process.

Multi-Party Situations

The institution may consolidate Formal Complaints alleging covered sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of covered sexual harassment arise out of the same facts or circumstances.

Determining Jurisdiction

The Title IX Coordinator will determine the instance in which the Title IX Grievance Procedure should apply to a Formal Complaint. The procedure will apply when all of the following elements are met, in the reasonable determination of the Title IX Coordinator:

1. The conduct is alleged to have occurred on or after August 14, 2020;

2. The conduct is alleged to have occurred in the United States;
3. The conduct is alleged to have occurred in Monroe Community College's *education program or activity (as defined below in definitions section)*; and
4. The alleged conduct, if true, would constitute covered sexual harassment as defined in this policy.

If all of the elements are met, Monroe Community College will investigate the allegations according to the Grievance Procedure.

Allegations Potentially Falling Under Two Policies

If the alleged conduct, if true, includes conduct that would constitute covered sexual harassment and conduct that would not constitute covered sexual harassment, the Title IX Grievance Procedure will be applied in the investigation and adjudication of all of the allegations.

Mandatory Dismissal

If any one of these elements are not met, the Title IX Coordinator will notify the parties that the Formal Complaint is being dismissed for the purposes of the Title IX Grievance Policy. Each party may appeal this dismissal using the procedure outlined in "Appeals" below.

Discretionary Dismissal

The Title IX Coordinator may dismiss a Formal Complaint brought under the Title IX Grievance Policy, or any specific allegations raised within that Formal Complaint, at any time during the investigation or hearing, if:

- A complainant notifies the Title IX Coordinator in writing that they would like to withdraw the Formal Complaint or any allegations raised in the Formal Complaint;
- The respondent is no longer enrolled or employed by Monroe Community College; or
- If specific circumstances prevent Monroe Community College from gathering evidence sufficient to reach a determination regarding the Formal Complaint or allegations within the Formal Complaint.

Each party may appeal this dismissal, using the process set forth in "Appeals," below.

Notice of Dismissal of Formal Complaint

Upon reaching a decision that the Formal Complaint or any allegations raised in the Formal Complaint, will be dismissed, the institution will promptly send written notice of the dismissal of the Formal Complaint or any specific allegation within the Formal Complaint, and the reason for the dismissal, simultaneously to the parties through their institutional email accounts. It is the responsibility of the parties to maintain and regularly check their Monroe Community College email accounts. Each party may appeal this dismissal, using the process set forth in "Appeals," below.

Notice of Removal/Referral to Other Adjudication Process

Upon dismissal of a Formal Complaint for the purposes of Title IX, Monroe Community College retains discretion to utilize the *Monroe Community College Student Code of Conduct and/or NYS 129B Sexual Misconduct Policy* to determine if a violation has occurred. If so, the college will promptly send written notice of the dismissal of the Formal Complaint under the Title IX Grievance Policy and to inform the parties that the allegations will be investigated using one of those processes, and not the Title IX Grievance Procedure.

Notice of Allegations

If the Formal Complaint moves forward, using the Title IX Grievance Procedure, then the Title IX Coordinator will draft and provide the Notice of Allegations to all parties alleged to be involved in the covered sexual harassment. Such notice will occur as soon as practicable, after the institution receives a Formal Complaint of the allegations, if there are no extenuating circumstances.

The parties will be notified through their Monroe Community College email accounts if they are a student or employee, and by other reasonable means if they are neither.

Monroe Community College will provide five (5) business days for respondents to review the Notice of Allegations and prepare a response before any initial interview.

The Title IX Coordinator may determine that the Formal Complaint must be dismissed on the mandatory grounds identified above, and will issue a Notice of Dismissal. If such a determination is made, all parties to the allegations of sexual harassment identified in the Formal Complaint will receive a Notice of Dismissal in conjunction with, or in separate correspondence after, the Notice of Allegations.

Contents of Notice

The Notice of Allegations will include the following:

- Notice of the institution's Title IX Grievance Procedure and a hyperlink to a copy of that process.
- Notice of the allegations potentially constituting covered sexual harassment, and sufficient details known at the time the Notice is issued, such as the identities of the parties involved in the incident, if known, including the complainant; the conduct allegedly constituting covered sexual harassment; and the date and location of the alleged incident, if known.
- A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
- A statement that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney, as required under 34 C.F.R. § 106.45(b)(5)(iv).
- A statement that before the conclusion of the investigation, the parties may inspect and review evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including the evidence upon which the institution does not intend to rely in reaching a determination regarding responsibility, and evidence that both tends to prove or disprove the allegations, whether obtained from a party or other source, as required under 34 C.F.R. § 106.45(b)(5)(vi).
- A statement that prohibits knowingly making false statements or knowingly submitting false information during the grievance process, as stated in the *Monroe Community College Student Code of Conduct* under Dishonesty or the MCC Employees and Visitor Conduct Policy.

Ongoing Notice

If, in the course of an investigation, the institution decides to investigate allegations about the complainant or respondent that are not included in the Notice of Allegations and are otherwise covered "sexual harassment" falling within the Title IX Grievance Policy, the institution will notify the parties whose identities are known of the additional allegations by their institutional email accounts or other reasonable means, if they are not students or employees at Monroe Community College.

The parties will be provided five (5) business days to review the additional allegations to prepare a response before any initial interview regarding those additional charges.

Advisor of Choice and Participation of Advisor of Choice

Monroe Community College will provide the parties equal access to advisors and support persons; any restrictions on advisor participation will be applied equally.

The college has a long-standing practice of requiring students to participate in the process directly and not through an advocate or representative. Students participating as complainant or respondent in this process may be accompanied by an Advisor of Choice to any meeting or hearing to which they are required or are eligible to attend. The Advisor of Choice is not an advocate. Except where explicitly stated by this Policy, as consistent with the Final Rule, Advisors of Choice shall not participate directly in the process as per standard policy and practice of Monroe Community College.

Monroe Community College will not intentionally schedule meetings or hearings on dates where the Advisors of Choice for all parties are not available, provided that the Advisors act reasonably in providing available dates and work collegially to find dates and times that meet all schedules.

Monroe Community College's obligations to investigate and adjudicate in a prompt timeframe under Title IX and other college policies apply to matters governed under this Policy, and Monroe Community College cannot agree to extensive delays solely to accommodate the schedule of an Advisor of Choice. The determination of what is reasonable shall be made by the Title IX Coordinator or designee. Monroe Community College will not be obligated to delay a meeting or hearing under this process more than five (5) business days due to the unavailability of an Advisor of Choice and may offer the party the opportunity to obtain a different Advisor of Choice, including the option of using one provided by Monroe Community College.

Notice of Meetings and Interviews

Monroe Community College will provide, to a party whose participation is invited or expected, written notice of the date, time, location, identity of participants, and purpose of investigative interviews or other meetings with a party, with sufficient time for the party to prepare to participate.

Delays

Each party may request a one-time delay in the Grievance Procedure of up to five (5) business days for good cause (granted or denied in the sole judgment of the Title IX Coordinator, Director for Student Rights and Responsibilities, or designee) provided that the requestor provides reasonable notice and the delay does not overly inconvenience other parties.

For example, a request to take a five day pause made an hour before a hearing for which multiple parties and their advisors have traveled to and prepared for shall generally not be granted, while a request for a five day pause in the middle of investigation interviews to allow a party to obtain certain documentary evidence shall generally be granted.

The Title IX Coordinator, Director for Student Rights and Responsibilities, or designee, shall have sole judgement to grant further pauses in the Process.

Investigation

General Rules of Investigations

After the Notice of Allegations is issued, the Title IX Coordinator and an investigator designated by the Title IX Coordinator will perform an investigation under a reasonably prompt timeframe of the conduct alleged to constitute covered sexual harassment after issuing the Notice of Allegations.

Monroe Community College and not the parties, has the burden of proof and the burden of gathering evidence, i.e. the responsibility of showing a violation of this Policy has occurred. This burden does not rest with either

party, and either party may decide not to share their account of what occurred or may decide not to participate in an investigation or hearing. This does not shift the burden of proof away from the college and does not indicate responsibility.

The college cannot access, consider, or disclose medical records without a waiver from the party (or parent, if applicable) to whom the records belong or about whom the records include information. Monroe Community College will provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence (i.e. evidence that tends to prove and disprove the allegations) as described below.

Inspection and Review of Evidence

Prior to the completion of the investigation, the parties will have an equal opportunity to inspect and review the evidence obtained through the investigation. The purpose of the inspection and review process is to allow each party the equal opportunity to meaningfully respond to the evidence prior to conclusion of the investigation.

Evidence that will be available for inspection and review by the parties will be any evidence that is directly related to the allegations raised in the Formal Complaint. It will include any:

- Evidence that is relevant, even if that evidence does not end up being relied upon by the college in issuing a determination regarding responsibility;
- Inculpatory or exculpatory evidence (i.e. evidence that tends to prove or disprove the allegations) that is directly related to the allegations, whether obtained from a party or other source.

All parties must submit any evidence they would like the investigator to consider prior to when the parties' time to inspect and review evidence begins. See, 85 Fed. Reg. 30026, 30307 (May 19, 2020).

The college will send the evidence made available for each party and each party's advisor, if any, to inspect and review through an electronic means or, where that may not be possible, in hard copy. Monroe Community College is not under an obligation to use any specific process or technology to provide the evidence and shall have the sole discretion in terms of determining format and any restrictions or limitations on access.

The parties will have ten (10) business days to inspect and review the evidence and submit a written response by email to the investigator. The investigator will consider the parties' written responses before completing the Investigative Report. Parties may request a reasonable extension as their designated extension request, for good reason.

The college will provide copies of the parties' written responses to the investigator to all parties and their advisors, if any. See, 85 Fed. Reg. 30026, 30307 (May 19, 2020).

After receipt of the parties' written responses, the investigators may choose to interview or re-interview a party, both parties, or witness(es), and may provide the parties with written notice, extending the investigation and explaining the reason for the extension.

Any evidence subject to inspection and review will be available at any hearing, including for purposes of cross-examination.

The parties and their advisors must sign an agreement not to disseminate any of the evidence subject to inspection and review or use such evidence for any purpose unrelated to the Title IX Grievance Procedure. See, 85 Fed. Reg. 30026, 30435 (May 19, 2020).

The parties and their advisors agree not to photograph or otherwise copy the evidence. See, 85 Fed. Reg. 30026, 30435 (May 19, 2020).

Inclusion of Evidence Not Directly Related to the Allegations

Evidence obtained in the investigation that is determined in the reasoned judgment of the investigator not to be directly related to the allegations in the Formal Complaint will be included in the appendices to the investigative report.

Investigative Report

The Title IX Coordinator and an investigator designated by the Title IX Coordinator will create an Investigative Report that fairly summarizes relevant evidence.

The Investigative Report is not intended to catalog all evidence obtained by the investigators, but rather, the purpose of the report is to provide a fair summary of that evidence.

Only relevant evidence (including both inculpatory and exculpatory – i.e. tending to prove and disprove the allegations) will be referenced in the Investigative Report.

The investigator may redact irrelevant information from the Investigative Report when that information is contained in documents or evidence that is otherwise relevant. See, 85 Red. Reg. 30026, 30304 (May 19, 2020).

Hearing

General Rules of Hearings

Monroe Community College will not issue a disciplinary sanction arising from an allegation of covered sexual harassment without holding a live hearing.

The live hearing may be conducted with all parties physically present in the same geographic location or, at the college's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually through Zoom or another remote conferencing platforms. This technology will enable participants simultaneously to see and hear each other. At its discretion, Monroe Community College may delay or adjourn a hearing based on technological errors not within a party's control.

All proceedings will be recorded through either audio recording or audiovisual recording by Monroe Community College. For privacy reasons, neither parties nor their advisors are allowed to record the hearings. Cameras or other reproduction equipment, other than Monroe Community College's audio recording or audiovisual recording devices, are not permitted in a hearing, unless as a result of reasonable accommodation. The recording or corresponding transcript, at the discretion of Monroe Community College, will be made available to the parties for inspection and review.

Prior to obtaining access to any evidence, the parties and their advisors must sign an agreement not to disseminate any of the testimony heard or evidence obtained in the hearing or use such testimony or evidence for any purpose unrelated to the Title IX Grievance Procedure. Once signed, this Agreement may not be withdrawn See, 85 Fed. Reg. 30026, 30435 (May 19, 2020).

Continuances or Granting Extensions

Monroe Community College may determine that multiple sessions or a continuance (i.e. a pause on the continuation of the hearing until a later date or time) is needed to complete a hearing. If so, the college will notify all participants and endeavor to accommodate all participants' schedules and complete the hearing as promptly as practicable.

Participants in the live hearing

Live hearings are not public, and the only individuals permitted to participate in the hearing are as follows:

Complainant and Respondent (The Parties):

- The parties cannot waive the right to a live hearing.
- The college may still proceed with the live hearing in the absence of a party, and may reach a determination of responsibility in their absence, including through any evidence gathered that does not constitute a “statement” by that party. 85 Fed. Reg. 30026, 30361 (May 19, 2020).
 - For example, A verbal or written statement constituting part or all of the sexual harassment itself is not a “prior statement” that must be excluded if the maker of the statement does not submit to cross-examination about that statement. In other words, a prior statement would not include a document, audio recording, audiovisual reading, and digital media, including but not limited to text messages, emails, and social media postings, that constitute the conduct alleged to have been the act of sexual harassment under the formal complaint. See, [OCR Blog article](#).
- Monroe Community College will not threaten, coerce, intimidate or discriminate against any party in an attempt to secure the party’s participation. See 34 C.F.R. § 106.71; see also 85 Fed. Reg. 30026, 30216 (May 19, 2020).
- If a party does not submit to cross-examination, the decision-maker cannot rely on any prior statements made by that party in reaching a determination regarding responsibility, but may reach a determination regarding responsibility based on evidence that does not constitute a “statement” by that party.
- The decision-maker cannot draw an inference about the determination regarding responsibility based solely on a party’s absence from the live hearing or refusal to answer cross examination or other questions. See 34 C.F.R. §106.45(b)(6)(i).
- The parties shall be subject to the institution’s [Rules of Decorum](#).

The Decision-maker:

- The hearing board will consist of a panel of three decision-makers, plus a non-voting Chair.
- No member of the hearing board will also have served as the Title IX Coordinator, Title IX investigator, or advisor to any party in the case, nor may any member of the hearing body serve on the appeals body in the case.
- No member of the hearing board will have a conflict of interest or bias in favor of or against complainants or respondents generally, or in favor or against the parties to the particular case.
- The hearing board will be trained on topics including how to serve impartially, issues of relevance, including how to apply the rape shield protections provided for complainants, and any technology to be used at the hearing.
- Each party will have an opportunity to raise any objections regarding a decision-maker’s actual or perceived conflicts of interest or bias upon receipt of notice identifying the decision-makers on the hearing board or during the live hearing.

Advisor of choice:

- The parties have the right to select an advisor of their choice, who may be, but does not have to be, an attorney.
- The advisor of choice may accompany the parties to any meeting or hearing they are permitted to attend, but may not speak for the party, except for the purpose of cross-examination at a hearing.

- The parties are not permitted to conduct cross-examination; it must be conducted by the advisor. As a result, if a party does not select an advisor, the institution will select an advisor to serve in this role for the limited purpose of conducting the cross-examination at no fee or charge to the party.
- The advisor is not prohibited from having a conflict of interest or bias in favor of or against complainants or respondents generally, or in favor or against the parties to the particular case.
- The advisor is not prohibited from being a witness in the matter.
- If a party does not attend the live hearing, the party's advisor may appear and conduct cross-examination on their behalf. 85 Fed. Reg. 30026, 30340 (May 19, 2020).
- If neither a party nor their advisor appear at the hearing, the college will provide an advisor to appear on behalf of the non-appearing party. See, 85 Fed. Reg. 30026, 30339-40 (May 19, 2020).
- Advisors shall be subject to the institution's [Rules of Decorum](#), and may be removed upon violation of those Rules.

Witnesses:

- Witnesses cannot be compelled to participate in the live hearing, and have the right not to participate in the hearing free from retaliation. See, 85 Fed. Reg. 30026, 30360 (May 19, 2020).
- If a witness does not submit to cross-examination, as described below, the decision-maker cannot rely on any statements made by that witness in reaching a determination regarding responsibility, including any statement relayed by the absent witness to a witness or party who testifies at the live hearing. 85 Fed. Reg. 30026, 30347 (May 19, 2020).
- Witnesses shall be subject to the institution's [Rules of Decorum](#).

Hearing Procedures

For all live hearings conducted under this Title IX Grievance Procedure, the procedure will be as follows:

- The Hearing Board Chair (non-voting) will open and establish rules and expectations for the hearing;
- The Parties will each be given the opportunity to provide opening statements and present witnesses;
- The Board will ask questions of the Parties and Witnesses;
- Parties will be given the opportunity for live cross-examination after the hearing board conducts its initial round of questioning. During the Parties' cross-examination, the Hearing Board Chair will have the authority to pause cross-examination at any time for the purposes of asking the hearing board's follow up questions; and any time necessary in order to enforce the established Rules of Decorum;
- Should a Party or the Party's Advisor choose not to cross-examine a Party or Witness, the Party shall affirmatively waive cross-examination through a written or oral statement to the Hearing Board Chair. A Party's waiver of cross-examination does not eliminate the ability of the hearing board to use statements made by the Party.

Live Cross-Examination Procedure

Each party's advisor will conduct live cross-examination of the other party or parties and witnesses. During this live-cross examination, the advisor will ask the other party or parties and witnesses relevant questions and follow-up questions, including those challenging credibility directly, orally, and in real time.

The Hearing Board Chair will request that advisors provide their intended cross-examination questions in writing, in advance of the hearing. Any questions not submitted in advance of the hearing must be submitted in

writing in advance of the cross-examination of a party or witness, to the Hearing Board Chair, so that the Hearing Board Chair is able to determine if the question is relevant, per the [Relevance Guide](#), before each question is answered. Cross-examination questions that are duplicative of those already asked, including by the hearing board may be deemed irrelevant if they have already been asked and answered.

Review of Recording

A recording or transcript of the hearing, at the discretion of Monroe Community College, will be available for review by the parties within three (3) business days following the hearing, unless there are any extenuating circumstances. The recording or transcript of the hearing will not be provided to parties or advisors of choice.

Determination Regarding Responsibility

Standard of Proof

Monroe Community College uses the preponderance of the evidence standard for investigations and determinations regarding responsibility of formal complaints covered under this Policy. This means that the decision-makers determine whether it is more likely than not that a violation of the policy occurred.

General Considerations for Evaluating Testimony and Evidence

While the opportunity for cross-examination is required in all Title IX hearings, determinations regarding responsibility may be based in part, or entirely, on documentary, audiovisual, and digital evidence, as warranted in the reasoned judgment of the hearing board.

The hearing board shall not draw inferences regarding a party or witness' credibility based on the party or witness' status as a complainant, respondent, or witness, nor shall it base its judgments in stereotypes about how a party or witness would or should act under the circumstances.

Generally, credibility judgments should rest on the demeanor of the party or witness, the plausibility of their testimony, the consistency of their testimony, and its reliability in light of corroborating or conflicting testimony or evidence.

Still, credibility judgments should not rest on whether a party or witness' testimony is non-linear or incomplete, or if the party or witness is displaying stress or anxiety.

The hearing board will afford the highest weight relative to other testimony to first-hand testimony by parties and witnesses regarding their own memory of specific facts that occurred. Both inculpatory and exculpatory (i.e. tending to prove and disprove the allegations) evidence will be weighed in equal fashion.

Except where specifically barred by the Title IX Final Rule, a witness' testimony regarding third-party knowledge of the facts at issue will be allowed, but will generally be accorded lower weight than testimony regarding direct knowledge of specific facts that occurred.

The Final Rule requires that Monroe Community College allow parties to call "expert witnesses" for direct and cross examination. While the expert witness will be allowed to testify and be cross-examined as required by the Final Rule, the hearing board will be instructed to afford lower weight to non-factual testimony of the expert relative to fact witnesses, and any expert testimony that is not directed to the specific facts that occurred in the case will be afforded lower weight relative to fact witnesses, regardless of whether the expert witness testimony is the subject of cross examination and regardless of whether all parties present experts as witnesses.

The Final Rule requires that Monroe Community College allow parties to call character witnesses to testify. While the character witnesses will be allowed to testify and be cross-examined as required by the Final Rule, the hearing board will be instructed to afford very low weight to any non-factual character testimony of any witness.

The Final Rule requires that Monroe Community College admit and allow testimony regarding polygraph tests (“lie detector tests”) and other procedures that are outside of standard use in academic and non-academic conduct processes. While the processes and testimony about them will be allowed as required by the Final Rule, the hearing board will be instructed to afford lower weight to such processes relative to the testimony of fact witnesses.

Where a party or witness’ conduct or statements demonstrate that the party or witness is engaging in retaliatory conduct, including but not limited to witness tampering and intimidation, the hearing board may draw an adverse inference as to that party or witness’ credibility.

Components of the Determination Regarding Responsibility

The written Determination Regarding Responsibility will be issued simultaneously to all parties through their Monroe Community College email account, or other reasonable means as necessary.

The Determination will include:

1. Identification of the allegations potentially constituting covered sexual harassment;
2. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
3. Findings of fact supporting the determination;
4. Conclusions regarding which section of this policy and/or the *Monroe Community College Student Code of Conduct and/or the Sexual Harassment Response and Prevention Policy*, if any, the respondent has or has not violated;
5. For each allegation:
 - a. A statement of, and rationale for, a determination regarding responsibility;
 - b. A statement of, and rationale for, any disciplinary sanctions the college imposes on the respondent; and
 - c. A statement of, and rationale for, whether remedies designed to restore or preserve equal access to the college’s education program or activity will be provided by the college to the complainant; and
6. The recipient’s procedures and the permitted reasons for the complainant and respondent to appeal, described below in “Appeal.”

Timeline of Determination Regarding Responsibility

If there are no extenuating circumstances, the determination regarding responsibility will be issued by Monroe Community College within 30 business days of the completion of the hearing. Every effort will be made to issue the decision to both parties within 15 business days.

Finality

The determination regarding responsibility becomes final either on the date that the institution provides the parties with the written determination of the result of the appeal, if an appeal is filed consistent with the procedures and timeline outlined in “Appeals” below, or if an appeal is not filed, the date on which the opportunity to appeal expires.

Appeals

Each party may appeal:

1. the dismissal of a formal complaint or any included allegations; and/or

2. a determination regarding responsibility.

To appeal, a party must submit their written appeal within five (5) business days of being notified of the decision, indicating the grounds for the appeal. Appeals must be submitted electronically through the [Appeal Form](#).

The limited grounds for appeal available are as follows:

- Procedural irregularity that affected the outcome of the matter (i.e. a failure to follow the institution's own procedures);
- 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;
- The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against an individual party, or for or against complainants or respondents in general, that affected the outcome of the matter;
- The sanctions imposed are substantially disproportionate to the severity of the violation.

The submission of appeal stays any sanctions for the pendency of an appeal. Supportive measures and remote learning opportunities remain available during the pendency of the appeal.

If a party appeals, the institution will, as soon as practicable, notify the other party in writing of the appeal, however the time for appeal shall be offered equitably to all parties and shall not be extended for any party solely because the other party filed an appeal.

Appeals will be decided by an appeals panel of at least one Monroe Community College administrator and two other decision-makers, who will be free of conflict of interest and bias, and will not serve as investigator, Title IX Coordinator, or hearing decision-maker in the same matter.

The outcome of the appeal will be provided in writing simultaneously to both parties, and include the appeal panel's rationale for the decision.

Retaliation

Monroe Community College will keep the identity of any individual who has made a report or complaint of sex discrimination confidential, including the identity of any individual who has made a report or filed a Formal Complaint of sexual harassment under this Title IX Grievance Policy, any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, and any witness, except as permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding under this Title IX Grievance Policy.

No person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX of the Education Amendments of 1972 or its implementing regulations.

No person may intimidate, threaten, coerce, or discriminate against any individual 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 Title IX Grievance Policy.

Any intimidation, threats, coercion, or discrimination, for the purpose of interfering with any right or privilege secured by Title IX or its implementing regulations constitutes retaliation. This includes any charges filed against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but that arise from the same facts or circumstances as a report or complaint of sex discrimination or a report or Formal Complaint of sexual harassment. For reports involving drugs and alcohol, please see the [SUNY Policy For Alcohol and/or Drug Use Amnesty in Sexual and Interpersonal Violence Cases](#).

Complaints alleging retaliation may be filed according to the Monroe Community College's grievance procedures for sex discrimination using the [Discrimination and Sexual Harassment Complaint Form](#).

Definitions

- **Covered Sexual Harassment:** For the purposes of this Title IX Grievance Policy, “covered sexual harassment” includes any conduct on the basis of sex that satisfies one or more of the following:
 - An employee’s conditioning educational benefits on participation in unwelcome sexual conduct (i.e., quid pro quo);
 - Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the educational institution’s education program or activity.
 - Sexual assault (as defined in the Clery Act), which includes any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent;
 - Dating violence (as defined in the Violence Against Women Act (VAWA) amendments to the Clery Act), which includes any violence committed by a person: (a) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (b) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) the length of the relationship; (ii) the type of relationship; and (iii) the frequency of interaction between the persons involved in the relationship.
 - Domestic violence (as defined in the VAWA amendments to the Clery Act), which includes any felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, b a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, b a person similarly situated to a spouse of the victim under New York state’s domestic or family violence laws or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of New York State.
 - Stalking (as defined in the VAWA amendments to the Clery Act), meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to (A) fear for their safety or the safety of others; or (B) suffer substantial emotional distress.

Note that conduct that does not meet one or more of these criteria may still be prohibited under the *Monroe Community College Student Code of Conduct and NYS 129B Sexual Misconduct Policy and Sexual Harassment Response and Prevention Policy*.

- **Consent:** For the purposes of this Title IX Grievance Policy, “affirmative consent” is the same as the definition set forth in the *Monroe Community College Student Code of Conduct and NYS 129B Sexual Misconduct Policy*:

A knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant’s sex, sexual orientation, gender identity, or gender expression.

- Consent to any sexual act or prior consensual sexual activity between or with any party does not necessarily constitute consent to any other sexual act.
- Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.

- Consent may be initially given but withdrawn at any time.
- Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by a lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. Depending upon the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants, may be incapacitated and therefore unable to consent.
- Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.
- When consent is withdrawn or can no longer be given, sexual activity must stop.
- **Education Program or Activity:** For the purposes of this Title IX Grievance Policy, Monroe Community College’s “education program or activity” includes:
 - Any on-campus premises
 - Any off-campus premises that Monroe Community College has substantial control over. This includes buildings or property owned or controlled by a recognized student organization.
 - Activity occurring within computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of Monroe Community College’s programs and activities over which the Monroe Community College has substantial control.
- **Formal Complaint:** For the purposes of this Title IX Grievance Policy, “formal complaint” means a document – including an electronic submission - filed by a complainant with a signature or other indication that the complainant is the person filing the formal complaint, or signed by the Title IX Coordinator, alleging sexual harassment against a respondent about conduct within Monroe Community College’s education program or activity and requesting initiation of the procedures consistent with the Title IX Grievance Policy to investigate the allegation of sexual harassment.
- **Complainant:** For the purposes of this Title IX Grievance Policy, “Complainant” means any individual who has reported being, or is alleged to be, the victim of conduct that could constitute covered sexual harassment as defined under this policy.
- **Respondent:** For the purposes of this Title IX Grievance policy, “Respondent” means any individual who has been reported to be the perpetrator of conduct that could constitute covered sexual harassment as defined under this policy.
- **Parties:** For the purposes of this Title IX Grievance process, “Parties” means the complainant and the respondent.
- **Business Day:** A “business day” means a day other than Saturday, Sunday, and New York State and federal holidays.
- **Relevant evidence and questions:** refer to any questions and evidence that tends to make an allegation of sexual harassment more or less likely to be true. “Relevant” evidence and questions do not include the following types of evidence and questions, which are deemed “irrelevant” at all stages of the Title IX Grievance Process:
 - Evidence and questions about the complainant’s sexual predisposition or prior sexual behavior unless:
 - They are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or
 - They concern specific incidents of the complainant’s prior sexual behavior with respect to the respondent and are offered to prove consent. 34 C.F.R. § 106.45(6)(i).
 - Evidence and questions that constitute, or seek disclosure of, information protected under a legally-recognized privilege (e.g. attorney-client privilege).

- Any party's medical, psychological, and similar records unless the party has given voluntary, written consent. 85 Fed. Reg. 30026, 30294 (May 19, 2020).

Related Information

College Documents

- [Discrimination and Sexual Harassment Complaint Form](#)
- [Appeal Form](#)
- [Relevance Guide](#)
- [Rules of Decorum](#)
- [SUNY Policy for Alcohol and/or Drug Use Amnesty in Sexual and Interpersonal Violence Cases](#)
- 2.10 Sexual Harassment Response and Prevention Policy
- 2.10P Sexual Harassment Complaint and Investigation Procedure
- 4.2 MCC Employee and Visitor Conduct Policy
- [Monroe Community College Student Code of Conduct and NYS 129B Sexual Misconduct Policy](#)

External Documents

[Full text of Final Rule Federal Title IX Regulations](#)