



2.21 Title IX Grievance Policy

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:

Policy Statement

Title IX of the Educational Amendments of 1972 prohibits any person in the United States from being discriminated against on the basis of sex in seeking access to any educational program or activity receiving federal financial assistance. The U.S. Department of Education, which enforces Title IX, has long defined the meaning of Title IX's prohibition on sex discrimination broadly to include various forms of sexual harassment and sexual violence that interferes with a student's ability to equally access our educational programs and opportunities.

Policy

Based on the Final Rule, Monroe Community College will implement the following Title IX Grievance Policy, effective August 14, 2020:

Making a Report Regarding Covered Sexual Harassment to Monroe Community College

Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Any person may also make a report using the [Discrimination and Sexual Harassment Complaint Form](#).

Contact Information for the Title IX Coordinator:

Shannon Glasgow

Brighton Campus, Building 1, Room 300

sglasgow@monroecc.edu

585-292-2108

Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address listed for the Title IX Coordinator.

Reporting information is also available on the [Title IX website](#).

Confidential Reporting

The following Officials will provide privacy, but **not** confidentiality, upon receiving a report of conduct prohibited under this policy:

- Title IX Coordinator or designee;
- Student Rights and Responsibilities Director and Prevention & Education Advisor;

- Housing and Residence Life staff, including Resident Directors and Resident Assistants;
- Public Safety staff;
- Downtown Student Engagement Center staff;
- Chief Diversity Officer; and
- Faculty, administrators and most staff.

The following Officials may provide confidentiality:

- Counseling Services, Brighton Campus
- Ivan Matthew, Student Services, Downtown Campus
- RESTORE advocate, (716) 218-8668 or 24/7 Hotline: (585) 546-2777
- [Anonymous Complaint Form](#)
- Silent Witness Hotline, (585) 292-3636

Non-Investigatory Measures Available Under the Title IX Grievance Policy

Supportive Measures

Complainants (as defined below), who report allegations that could constitute covered sexual harassment under this policy, have the right to receive supportive measures from Monroe Community College regardless of whether they desire to file a complaint. These supportive measures may include counseling, extensions of deadlines or other courses-related adjustments, modifications in on-campus work or class schedules, campus escort services, restrictions on contact between the parties (no contact orders), changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, as appropriate.

Supportive measures are non-disciplinary and non-punitive (See 85 Fed. Reg. 30401).

Emergency Removal

Monroe Community College retains the authority to remove a respondent from Monroe Community College's programs or activities on an emergency basis, where Monroe Community College (1) undertakes an individualized safety and risk analysis; and (2) determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of covered sexual harassment justifies a removal.

If Monroe Community College determines such removal is necessary, the respondent will be provided notice and an opportunity to challenge the decision within three (3) business days following the removal. If the respondent challenges the removal, the administrator hearing the challenge will issue a decision within five (5) business days of the request. The administrator will then not be involved in any decision regarding responsibility of the respondent or any other appeal resulting from the process. Regardless of the outcome of this meeting, Monroe Community College may still proceed with the investigation and hearing process.

Administrative Leave

Monroe Community College retains the authority to place a non-student employee respondent on administrative leave during the Title IX Grievance Process, consistent with the applicable collective bargaining agreement.

Confidentiality vs. Privacy

Consistent with the Monroe Community College Student Code of Conduct, references made to *confidentiality* refer to the ability of identified confidential resources to not report crimes and violations to law enforcement or college officials without permission, except for extreme circumstances, such as a health and/or safety emergency or child abuse. References made to privacy mean Monroe Community College offices and employees who cannot guarantee confidentiality but will maintain privacy to the greatest extent possible, and information disclosed will be relayed only as necessary to investigate and/or seek a resolution and to notify the Title IX Coordinator or designee, who is responsible for tracking patterns and spotting systemic issues. Monroe Community College will limit the disclosure as much as practicable, even if the Title IX Coordinator determines that the request for confidentiality cannot be honored.

Disability Accommodations

This Policy does not alter any institutional obligations under federal disability laws including the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973.

Parties may request reasonable accommodations for disclosed disabilities to the Title IX Coordinator at any point before or during the Title IX Grievance Process that do not fundamentally alter the Process. The Title IX Coordinator will not affirmatively provide disability accommodations that have not been specifically requested by the Parties, even where the Parties may be receiving accommodations in other institutional programs and activities.

Background

On May 19, 2020, the U.S. Department of Education issued a Final Rule under Title IX of the Education Amendments of 1972 that:

- Defines the meaning of “sexual harassment” (including forms of sex-based violence)
- Addresses how this institution **must** respond to reports of misconduct falling within that definition of sexual harassment, and
- Mandates a grievance process that this institution **must** follow to comply with the law in these specific covered cases before issuing a disciplinary sanction against a person accused of sexual harassment.

Applicability

A Complainant and Respondent can be any student, employee, intern paid or non-paid, contractors and persons conducting business, participating in an education program or activity. The definitions for Complainant, Respondent, and Education Program or Activity are provided below in the Definitions section.

Effective Date

This Title IX Grievance Policy will become effective on August 14, 2020, and will only apply to formal complaints of sexual harassment brought on or after August 14, 2020. Complaints brought prior to August 14, 2020 will be investigated and adjudicated according to the Title IX Grievance Policy if a case is not complete by that date.

Revocation by Operation of Law

Should any portion of the Title IX Final Rule, 85 Fed. Reg. 30026 (May 19, 2020), be stayed or held invalid by a court of law, or should the Title IX Final Rule be withdrawn or modified not to require the elements of this

policy, then this policy, or the invalidated elements of this policy, will be deemed revoked as of the publication date or the opinion or order and for all reports after that date, as well as any elements of the process that occur after that date if a case is not complete by the date of opinion or order publication. Should the Title IX Grievance Policy be revoked in this manner, any conduct covered under the Title IX Grievance Policy shall be investigated and adjudicated under the existing [Monroe Community College Student Code of Conduct and NYS 129B Sexual Misconduct Policy](#).

Non-Discrimination in Application

The requirements and protections of this policy apply equally regardless of sex, sexual orientation, gender identity, gender expression, or other protected classes covered by federal or state law. All requirements and protections are equitably provided to individuals regardless of such status or status as a Complainant, Respondent, or Witness. Individuals who wish to file a complaint about Monroe Community College's policy or process may contact the [Department of Education's Office for Civil Rights](#).

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](#)
- 2.10 Sexual Harassment Response and Prevention Policy
- 2.10P Sexual Harassment Complaint and Investigation Procedure
- [Monroe Community College Student Code of Conduct and NYS 129B Sexual Misconduct Policy](#)

Other Related Documents

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

History

Policy approved by the MCC Board of Trustees August 10, 2020