Monroe Community College
STATE UNIVERSITY OF NEW YORK

2.25P Nondiscrimination Grievance Procedure for Discrimination Complaints for Students and Employees

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 1, 2024

Date Last Approved:

Description of Procedure

Grievance Procedure for Discrimination Complaints

Filing a Complaint

Who can make a Complaint?

- A Complainant, which includes: a student or employee of the College who is alleged to have been subjected to conduct that could constitute discrimination under Nondiscrimination Protections; or a person other than a student or employee of the College who is alleged to have been subjected to conduct that could constitute discrimination under Nondiscrimination Protections at a time when that individual was participating or attempting to participate in the College's Education Program or Activity;
- A parent, guardian, or other authorized legal representative with the legal right to act on behalf of a Complainant; or
- The Title IX Coordinator.

Title IX Coordinator initiated Complaints

In the absence of a Complaint or the withdrawal of any or all of the allegations in a Complaint, and in the absence or termination of an informal resolution process, the Title IX Coordinator must determine whether to initiate a Complaint of discrimination. This determination is fact-specific, and the Title IX Coordinator must consider:

- The Complainant's request not to proceed with the initiation of a Complaint;
- The Complainant's reasonable safety concerns regarding initiation of a Complaint;
- The risk that additional acts of discrimination would occur if a Complaint were not initiated;
- The severity of the alleged discrimination, including whether the discrimination, if established, would require the removal of a Respondent from campus or imposition of another disciplinary sanction to end the discrimination and prevent its recurrence;
- The age and relationship of the Parties, including whether the Respondent is an employee of the recipient;
- The scope of the alleged discrimination, including information suggesting a pattern, ongoing discrimination;
- The availability of evidence to assist a decisionmaker in determining whether discrimination occurred; and

- Whether the College could end the alleged discrimination and prevent its recurrence without initiating these grievance procedures.

If after considering these and other relevant factors, the Title IX Coordinator determines that the conduct as alleged present as an imminent and serious threat to the health or safety of the Complainant or other person, or that the conduct as alleged prevents the College from ensuring equal access on the basis of sex to its Education Program or Activity, the Title IX Coordinator may initiate a Complaint.

If the Title IX Coordinator does initiate the Complaint after making this determination, the Title IX Coordinator must notify the Complainant prior to doing so and appropriately address reasonable concerns about the Complainant's safety or the safety of others, including by providing supportive measures as listed in Section VI of these procedures.

Format of Complaint

As defined in the Definitions section of the policy, a Complaint can be an oral or written request to the College that objectively can be understood as a request for the College to investigate and make a determination about alleged discrimination at the College.

Who can I report a Complaint to?

Any reports discrimination may be made directly to the Title IX Coordinator, whose contact information is listed at the beginning of this Grievance Procedure. There are other ways in which a Party may report a Complaint.

The College requires that any employee who is not a Confidential Employee must notify the Title IX Coordinator when the employee has information about conduct that reasonably may constitute discrimination.

All other employees at the College who are not Confidential Employees as identified above are required to notify the Title IX Coordinator when the employee has information about conduct that reasonably may constitute discrimination, including Sex-Based Harassment.

Multi-Party Situations and Consolidation of Complaints

The College may consolidate Complaints alleging discrimination 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 discrimination arise out of the same facts or circumstances. When more than one Complainant or more than one Respondent is involved, references below to a Party, Complainant, or Respondent include the plural, as applicable.

Allegations Potentially Falling Under Two Policies

If the alleged conduct, if true, includes conduct that would constitute covered sexual harassment involving a student and conduct that would not constitute covered sexual harassment involving a student, the Grievance Procedures for Sex-Based Harassment Complaints Involving Students will be applied in the investigation and adjudication of all of the allegations.

If a particular situation invokes more than one College policy or process, the College reserves the right to determine the most applicable policy or process and to utilize that policy or process.

Notice of Allegations

Upon initiation of the College's grievance procedure, the College will notify the Parties of the following:

- The College grievance procedure and any informal resolution process;

- Sufficient information available at the time to allow the Parties to respond to the allegations, including the identities of the Parties involved in the incident(s), the conduct alleged to constitute discrimination, and the date(s) and location(s) of the alleged incident(s);
- That Retaliation is prohibited; and
- The Parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence or an accurate description of this evidence.

If, in the course of an investigation, the College decides to investigate additional allegations of discrimination by the Respondent toward the Complainant that are not included in the notice provided or that are included in a Complaint that is consolidated, the College will notify the Parties of the additional allegations.

Investigation

The College will provide for adequate, reliable, and impartial investigation of Complaints. The burden is on the College—not on the Parties—to conduct an investigation that gathers sufficient evidence to determine whether discrimination occurred.

The College will provide an equal opportunity for the Parties to present fact witnesses and other inculpatory and exculpatory evidence that is relevant and not otherwise impermissible. The College will review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance.

The College will provide each Party with an equal opportunity to access the evidence that is relevant to the allegations of discrimination and not otherwise impermissible by providing each an equal opportunity to access either:

- The relevant and not otherwise impermissible evidence; or
- An accurate description of this evidence.

Investigative Report:

- The Title IX Coordinator and/or an investigator designated by the Title IX Coordinator will create an Investigative Report that fairly summarizes relevant evidence and will provide that Report to the Parties.
- The Investigative Report is not intended to catalog all evidence obtained by the investigator, but only to provide a fair summary of the relevant evidence.
- Only relevant evidence (including both inculpatory and exculpatory – i.e., tending to prove and disprove the allegations - relevant evidence) 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/are otherwise relevant.
- The College will provide a reasonable opportunity to respond to the evidence or the accurate description of the evidence; and
- The College will take reasonable steps to prevent and address the Parties' unauthorized disclosure of information and evidence obtained solely through the grievance procedures. Disclosures of such information and evidence for purposes of administrative proceedings or litigation related to the Complaint of discrimination are authorized.

Impermissible Evidence

The following types of evidence, and questions seeking that evidence, are impermissible (i.e., will not be accessed or considered, except by the College to determine whether one of the exceptions listed below applies; will not be disclosed; and will not otherwise be used), regardless of whether they are relevant:

- Evidence that is protected under a privilege recognized by Federal or State law or evidence provided to a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
- A Party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the Party or witness, unless the College obtains that Party's or witness's voluntary, written consent for use in its grievance procedure; and
- Evidence that relates to the Complainant's sexual interests or prior sexual conduct, unless evidence about the Complainant's prior sexual conduct is offered to prove that someone other than the Respondent committed the alleged conduct or is evidence about specific incidents of the Complainant's prior sexual conduct with the Respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the Complainant and Respondent does not by itself demonstrate or imply the Complainant's consent to the alleged sex discrimination or preclude determination that sex discrimination occurred.

Questioning Parties and Witnesses to Aid in Evaluating Allegations and Assessing Credibility

When a party or witness's credibility is in dispute, and such dispute is relevant to evaluating one or more allegations of discrimination, the investigator and/or decisionmaker must have an opportunity to question any party or witness whose credibility is in dispute in a live format.

The investigator/decisionmaker will question Parties and witnesses to adequately assess a Party's or witness's credibility to the extent credibility is both in dispute and Relevant to evaluating one or more allegations of discrimination. This will occur during individual meetings with a Party or witness.

Determination Regarding Responsibility

Following an investigation and evaluation of all relevant and not otherwise impermissible evidence:

- The Title IX Coordinator will appoint an impartial decisionmaker who is responsible for rendering determinations regarding allegations of discrimination.
- A decision regarding responsibility, including any consequences or sanctions, will be made by the decisionmaker. Typically, the decision will be based on a preponderance of the evidence as presented in the investigation report. If deemed necessary, the decisionmaker may request additional information by meeting separately with the parties, witnesses, or gathering other relevant information. The parties may also request separate meetings with the decisionmaker to provide additional relevant information.
- The preponderance of the evidence standard of proof requires the decisionmaker to evaluate relevant and not otherwise impermissible evidence for its persuasiveness. If the decisionmaker is not persuaded by the evidence, under the applicable standard, that discrimination occurred, whatever the quantity of the evidence is, the decisionmaker will not determine that discrimination occurred.
- The decisionmaker will notify the Parties in writing of the determination whether discrimination occurred, including the rationale for such determination, and the procedures and permissible bases for the Complainant and Respondent to appeal, if applicable;

- The College will not impose discipline on a Respondent for discrimination unless there is a determination at the conclusion of the grievance procedure that the Respondent engaged in prohibited discrimination.
- If there is a determination that discrimination occurred, the Title IX Coordinator will, as appropriate
    - Coordinate the provision and implementation of remedies to a Complainant and other people the College identifies as having had equal access to the College's Education Program or Activity limited or denied by discrimination;
    - Coordinate the imposition of any disciplinary sanctions on a Respondent, including notification to the Complainant of any such disciplinary sanctions; and
    - Take other appropriate prompt and effective steps to ensure that discrimination does not continue or recur within the College's Education Program or Activity.
- The College will comply with the applicable grievance procedure under any Handbook or Collective Bargaining Agreement before the imposition of any disciplinary sanctions against a Respondent; and
- The College will not discipline a Party, witness, or others participating in the grievance procedure for making a false statement or for engaging in consensual sexual conduct based solely on the determination whether discrimination occurred.

Optional: Informal Resolution

Procedures for Entering and Exiting Informal Resolution Process

At any time prior to determining whether Sex-Based Harassment occurred under this Grievance Procedure, including prior to making a Complaint, Parties may instead seek Monroe Community College's assistance to resolve allegations of Sex Discrimination, and may elect to enter the informal resolution process.

The Parties may voluntarily elect to enter the Monroe Community College's informal resolution process at any time through an informed written Consent. This informed written Consent will include all terms of the elected informal process, including a statement that any agreement reached through the process is binding on the Parties.

No Party may be required to participate in informal resolution, and Monroe Community College may never condition enrollment, employment, or enjoyment of any other right or privilege upon agreeing to informal resolution.

The Parties may elect to leave the informal resolution process at any point until the informal resolution process is concluded. If a Party elects to leave the informal resolution process, the Grievance Procedure that the Parties paused will continue. In participating in the informal resolution process, the Parties understand that the timeframes governing the Grievance Procedure will temporarily cease, and only reinstate upon reentry into the Grievance Procedure.

Supportive Measures will be available, or continue to be available if already provided, during an informal resolution process, if elected to proceed. The Title IX Coordinator will also, to the extent necessary, take other appropriate prompt and effective steps to ensure that Sex Discrimination does not continue or recur within Monroe Community College's Education Program or Activity.

Notice Prior to Entry into Informal Resolution Process

Before the initiation of an informal resolution process, the Title IX Coordinator must provide to the Parties a written notice that explains:

- The allegations;

- The requirements of the informal resolution process;
- That, prior to agreeing to a resolution, any Party has the right to withdraw from the informal resolution process and to initiate or resume Monroe Community College's Grievance Procedure;
- That the Parties' agreement to a resolution at the conclusion of the informal resolution process would preclude the Parties from initiating or resuming Monroe Community College's Grievance Procedure arising from the same allegations;
- The potential terms that may be requested or offered in an informal resolution agreement, including notice that an informal resolution agreement is binding only on the Parties; and
- What information Monroe Community College will maintain and whether and how Monroe Community College could disclose such information for use in its Grievance Procedure if they are initiated or resumed.

Determination to Approve Entry into Informal Resolution Process

Even where the Parties agree to submit a matter to informal resolution, the Title IX Coordinator or designee may approve the decision to move the matter to the informal resolution process and may determine that informal resolution is not appropriate under the circumstances.

Factors that the Title IX Coordinator or designee may weigh in considering the appropriateness of the informal resolution process include, but are not limited to, the gravity of the allegations, whether there is an ongoing threat of harm or safety to the campus, whether the Respondent is a repeat offender, whether the alleged conduct would present a future risk of harm to others, and whether the Parties are participating in good faith. This determination is not subject to appeal.

Informal resolution may be available to address allegations of Student-on-Student Sex-Based Harassment and is not allowed to address allegations of employee-on-Student Sex-Based Harassment.

At any time after the commencement of the informal resolution process, the Title IX Coordinator or designee determine that the informal resolution process is not an appropriate method for resolving the matter, and may require that the matter be resolved through the Grievance Procedure. This determination is not subject to appeal.

If informal resolution is approved or denied, Monroe Community College will provide the outcome in writing simultaneously to the Parties. If informal resolution is approved, the Title IX Coordinator shall also provide the information of the facilitator in writing to the Parties in a reasonable timeframe once the facilitator is assigned.

Role of the Facilitator

Informal resolution processes are managed by trained facilitators. All facilitators must not be the same person as the investigator or the/a decisionmaker(s) in Monroe Community College's Grievance Procedure. Any person designated to facilitate informal resolution must not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent. The Title IX Coordinator may never serve as the facilitator, subject to these restrictions.

All facilitators must have specialized training, required by law and regulation. Such training includes:

- Monroe Community College's obligation to address sex discrimination, including Sex-Based Harassment, in its Education Program or Activity;
- The scope of conduct that constitutes sex discrimination, including Sex-Based Harassment, under Title IX, including the definition of Sex-Based Harassment;

- All applicable notification and information requirements related to parental, family, or marital status, including pregnancy and related conditions, and Monroe Community College's response to sex discrimination;
- The rules and practices associated with Monroe Community College's informal resolution process; and
- How to serve impartially, including by avoiding conflicts of interest and bias.

Contents of Informal Resolution Agreements

Potential terms that may be included in an informal resolution agreement between the Parties include but are not limited to:

- Restrictions on contact; and
- Restrictions on the Respondent's participation in one or more of Monroe Community College's education programs or activities or attendance at specific events, including restrictions Monroe Community College could have imposed as Remedies or Disciplinary Sanctions had Monroe Community College determined at the conclusion of the Grievance Procedure that Sex-Based Harassment occurred.

Breach of Informal Resolution Agreements

If a Party breaches the resolution or if Monroe Community College has other compelling reasons, such as if it learns of any fraud by a Party in entering into the agreement, Monroe Community College may void the agreement and initiate or resume the Grievance Procedure.

Confidentiality

In entering the informal resolution process, the Parties agree that any testimony and evidence (including admissions of responsibility) they share or receive during the informal resolution process concerning the allegations of the Complaint is confidential. No evidence concerning the allegations obtained within the informal resolution process may be disseminated to any person, provided that any Party to the informal resolution process may generally discuss the allegations under investigation with a parent, friend, advisor, or other source of emotional support, or with an advocacy organization. As a condition of entering the informal resolution process, any evidence shared or received during the informal resolution process may not be used in any subsequent Grievance Procedure or institutional appeal.

Informal Resolution Options

Monroe Community College offers the following informal resolution procedures for addressing Complaints of Sex-Based Harassment described under this Grievance Procedure:

- Administrative Resolution
    - Should the Parties mutually determine to enter the informal resolution process, and the Respondent elects to accept responsibility for the allegations of the Complaint at any point during the informal resolution process, the institution may administratively resolve the Complaint.
    - Where the Respondent admits responsibility, the Parties will receive simultaneous written notification of the acceptance of responsibility, and a decision maker will convene to determine the Respondent's sanction and other Remedies, as appropriate and consistent with institutional policy. The Parties will be given an opportunity to be heard at the sanctions hearing, including without limitation, the submission of impact statements, and the Parties may be accompanied by

their Advisor, but questioning of Parties or witnesses will not be permitted. The Parties will receive simultaneous written notification of the decision regarding sanctions and Remedies, which may be appealed according to the process described below in Section I. Appeals of Dismissals and Determinations.

Dismissal of a Complaint

Bases for Dismissal

The College may dismiss a Complaint of discrimination for any of the following reasons:

- The College is unable to identify the Respondent after taking reasonable steps to do so;
- The Respondent is not participating in the College's Education Program or Activity and is not employed by the College;
- The Complainant voluntarily withdraws any or all of the allegations in the Complaint, the Title IX Coordinator declines to initiate a Complaint under the bases described in these procedures, and the College determines that, without the Complainant's withdrawn allegations, the conduct that remains alleged in the Complaint, if any, would not constitute discrimination under Nondiscrimination Protections or these grievance procedures even if proven; or
- The College determines that the conduct alleged in the Complaint, even if proven, would not constitute discrimination under Nondiscrimination Protections or these procedures. Note the College must make reasonable efforts to clarify the allegations with the Complainant before dismissing under this basis.

Notice of Dismissal

Upon dismissal, the College will promptly notify the Complainant of the basis for the dismissal. If the dismissal occurs after the Respondent has been notified of the allegations, then the College will also notify the Respondent of the dismissal and the basis for the dismissal promptly following notification to the Complainant, or simultaneously if notification is in writing.

The College will notify the Complainant that a dismissal may be appealed and will provide the Complainant with an opportunity to appeal the dismissal of a Complaint. If the dismissal occurs after the Respondent has been notified of the allegations, then the College will also notify the Respondent that the dismissal may be appealed. Dismissals may be appealed on the following bases:

- Procedural irregularity that would change the outcome;
- New evidence that would change the outcome and that was not reasonably available when the dismissal was made; and
- The Title IX Coordinator, investigator, or decisionmaker had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that would change the outcome.

Appeal rights must also be outlined in any notification of dismissal of a Complaint, as outlined below.

Appeal of Dismissals and Determinations

To appeal, a Party must submit their written appeal within five College business days of being notified of the decision, indicating the grounds for appeal.

The College offers the following process for appeals from a dismissal or a determination whether discrimination occurred:

If the dismissal or determination is appealed, the College will:

- Notify the Parties of any appeal, including notice of the allegations, if notice was not previously provided to the Respondent;
- Implement appeal procedures equally for the Parties;
- Ensure that the decisionmaker for the appeal did not take part in an investigation of the allegations or dismissal of the Complaint;
- Ensure that the decisionmaker for the appeal has been trained consistent with the Title IX regulations;
- Provide the Parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome; and
- Notify the Parties of the result of the appeal and the rationale for the result.

When a Complaint is dismissed, the College will, at a minimum:

- Offer supportive measures to the Complainant as appropriate.
- If the Respondent has been notified of the allegations, offer supportive measures to the Respondent as appropriate; and
- Take other prompt and effective steps, as appropriate, through the Title IX Coordinator to ensure that discrimination does not continue or recur within the College's Education Program or Activity.

The submission of appeal stays (or pauses) any sanctions for the pendency (or duration while the appeal is being deliberated and decided upon) of an appeal. Supportive measures and remote learning opportunities remain available during the pendency of the appeal.

If a Party appeals, the College 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 a hearing panel who will be free of conflict of interest and bias, and will not serve as investigator, Title IX Coordinator, or decisionmaker in the same matter.

The outcome of the appeal will be provided in writing simultaneously to both Parties and include rationale for the decision. The determination of the Appeal Decision-making Body is final.

Retaliation

The College prohibits retaliation, including peer retaliation, in its Education Program or Activity. Upon receiving a Complaint alleging retaliation or upon receiving information about conduct that reasonably may constitute retaliation under Title IX, the College will initiate its grievance procedure or, as appropriate, an informal resolution process.

Training

The College will ensure that the following individuals receive training related to their duties under Title IX promptly upon hiring or change of position that alters their duties, and annually thereafter. This training must not rely on sex stereotypes:

All Employees:

- Obligation to address sex discrimination in the education program or activity.
- Scope of conduct that constitutes sex discrimination under Title IX, including sex-based harassment.

- Applicable notification and information requirements.

Investigators, Decisionmakers, and Other Responsible Persons:

- All training required for employees.
- Obligations under Title IX grievance procedures.
- How to serve impartially, avoiding prejudgment, conflicts of interest, and bias.
- Meaning and application of "relevant" in relation to questions and evidence, including impermissible evidence types.

Facilitators of Informal Resolution Processes:

- All training required for employees.
- Rules and practices of the informal resolution process.
- How to serve impartially, avoiding conflicts of interest and bias.

Title IX Coordinator and Designees:

- All training required for employees, investigators, decisionmakers, and facilitators.
- Specific responsibilities under Title IX.
- Recordkeeping system requirements and compliance coordination.

Related Information

College Documents

- 2.10 Sexual Harassment and Discrimination Response and Prevention Policy
- 2.10P Sexual Harassment Complaint and Investigation Procedure
- Discrimination and Sexual Harassment Complaint Form
- 2.25 Nondiscrimination Policy for Discrimination Complaints for Students and Employees

External Documents

- Official Federal Rule in Federal Register (PDF)
- Title VII
- NYS Division of Human Rights