

**Moberly Area Community College  
Sexual Misconduct Policy**

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**I. Commitment to Prohibit Sexual Misconduct**

Moberly Area Community College is committed to providing an environment for its students, faculty, staff, and visitors, regardless of sexual orientation or gender identity, that discourages and prevents sexual misconduct. MACC maintains a strict policy prohibiting sexual misconduct in any form, to include sexual harassment, sexual discrimination, and sexual violence (rape, sexual assault and other sexual offenses, dating violence, domestic violence, and stalking). This policy applies to students and employees as well as third parties.

Response options are available through MACC policies and/or local, state, and federal law enforcement agencies for any persons who have been sexually harassed, have experienced sexual discrimination, or have been a victim of sexual assault or other sexual misconduct which impacts their educational experience or employment environment.

Any person found to be in violation of this Sexual Misconduct Policy will be subject to action by MACC, up to and including dismissal. A complainant may wish to report to law enforcement agencies. If a report to law enforcement agencies is desired, the Title IX Coordinator, or their designee, would be able to assist.

MACC complies with all laws and regulations governing how colleges and universities handle sexual offenses. This policy outlines institutional procedures to meet the requirements of Title IX, the Violence against Women Reauthorization Act of 2013, the Campus Sexual Violence Act (CampuSaVE Act), and the Clery Act.

If any person feels MACC is not meeting their federal regulatory requirements, regulatory complaints may be submitted to:

|  |  |
|--|--|
| Title IX and Clery Act   | Title VII  |
| U.S. Department of Education<br>One Petticoat Lane<br>1010 Walnut Street, Suite 320<br>Kansas City, MO 64106 | U.S. Equal Employment Opportunity Commission<br>Robert A. Young Federal Building<br>1222 Spruce Street, Room 8100<br>St. Louis, MO 63103 |

|   |  |
|---|--|
| 816.268.0550<br>816.268.0559 fax<br>ocr.kansascity@ed.gov | 800.669.4000<br>314.539.7894 fax<br>800.669.6820 TTY |
|---|--|

## II. Options for Assistance

### Immediate Assistance

The following non-MACC affiliated resources/shelters can provide an immediate, confidential response in a crisis situation and can assist an individual in obtaining needed resources and can provide guidance with reporting options and processes. These confidential contacts may also provide an advocate to accompany an individual to the hospital for treatment.

Safe Passage, Moberly  
 Hotline: 800-616-3754  
 Hotline: 660-269-8111  
 Phone: 660-269-8111  
[www.safepassagemoberly.org](http://www.safepassagemoberly.org)

True North Shelter, Columbia  
 Toll Free Crisis Line: 800-548-2480  
 Crisis Line: 573-875-1370  
 Crisis Line for Deaf: 800-380-3323  
 Phone: 573-875-1370  
<http://truenorthofcolumbia.org>

Audrain County Crisis Intervention Services, Mexico  
 Hotline: 800-246-2280  
 Phone: 800-246-2280  
[Audraincountycrisis.org](http://Audraincountycrisis.org)

Avenues, Hannibal  
 Hotline: 800-678-7713  
 Hotline: 573-221-4280  
 Phone: 573-221-4280  
<http://avenueshelp.org>

Coalition against Rape and Domestic Violence (CARDV), Fulton  
 Help Line: 573-642-4422  
 Business Office: 573-642-1418  
<http://callawaycardv.org>

The following emergency numbers are available to report sexual misconduct or an emergency situation.

MACC Director of Security and Residential Life 660-263-4100 x11247 or 660-833-6990  
 MACC Title IX Coordinator 660-263-4100 x11369  
 Moberly Police 660-263-0346  
 Columbia Police 573-874-7652

Hannibal Police            573-221-0987  
Kirksville Police        660-665-5621  
Mexico Public Safety   573-473-5800

A victim of sexual assault should seek preventative treatment and treatment for injuries, as well as preserve evidence by being examined at a hospital. To preserve evidence, an individual should not bathe or change clothes or do any cleaning up in any manner prior to receiving medical assistance. The following local hospitals are trained to use a rape kit and perform examinations for evidence:

Moberly Regional Medical Center    660-263-8400  
1515 Union Avenue  
Moberly, MO

University of Missouri-Columbia Hospital and Clinics   573-882-4141  
1 Hospital Drive  
Columbia, MO

Hannibal Regional Hospital    573-248-1300  
6000 Hospital Drive  
Hannibal, MO

Northeast Regional Medical Center   660-785-1000  
315 South Osteopathy  
Kirksville, MO

#### Ongoing Assistance

The following options exist for counseling, advocacy, and support for victims of sexual misconduct. These resources are available whether or not an individual chooses to make an official report to the College or to law enforcement.

#### MACC Resource:

MACC Student Assistance Program  
(provided through H&H Health Associates, Inc.)  
314-845-8302 or 800-832-8302 [info@hhhealthassociates.com](mailto:info@hhhealthassociates.com) [www.hhhealthassociates.com](http://www.hhhealthassociates.com)

MACC Employee Assistance Program (provided through United Healthcare)  
888-887-4114  
[Myuhc.com](http://Myuhc.com)

The Employee/Student Assistance Program (EAP/SAP) offers counseling services and/or legal advice for both the complainant and the respondent involved in cases of sexual assault, harassment, discrimination, or other sexual misconduct. All services are confidential and at no cost to all students, employees, family members, significant others, and anyone residing in the student's or employee's household. Access to the EAP/SAP is 24/7 by phone or in-person by appointment. EAP/SAP staff will be able to connect an individual with a local counselor to meet face to face by appointment. In crisis situations, counselors are available to talk by phone 24/7. The EAP/SAP provides short-term, solution-focused counseling. Although there is no charge for services provided under the benefit, the benefit

does have limits on the level of service and length of time a service will be provided at no cost. If there is a need for longer-term treatment, EAP/SAP counselors will be able to help with appropriate recommendations and referrals.

#### Community Resources:

Safe Passage, Moberly  
Hotline: 800-616-3754  
Hotline: 660-269-8111  
Phone: 660-269-8111  
[www.safepassagemoberly.org](http://www.safepassagemoberly.org)

True North Shelter, Columbia  
Toll Free Crisis Line: 800-548-2480  
Crisis Line: 573-875-1370  
Crisis Line for Deaf: 800-380-3323  
Phone: 573-875-1370  
<http://truenorthofcolumbia.org>

Avenues, Hannibal  
Hotline: 800-678-7713  
Hotline: 573-221-4280  
Phone: 573-221-4280 <http://www.avenueshelp.org>

Coalition against Rape and Domestic Violence (CARDV), Fulton  
Help Line: 573-642-4422  
Business Office: 573-642-1418  
<http://callawaycardv.org>

### **III. Definitions**

#### Consent

Consent means that both people in a sexual encounter must agree to it, and either person may decide at any time that he or she no longer consents and wants to stop the activity. Consenting to one behavior does not obligate a person to consent to any other behaviors; consenting on one occasion also does not obligate a person to consent on any other occasion; consenting to have sexual intercourse with one person does not imply a person consents to have sexual intercourse with another person; consenting means only that at this particular time, a person would like to engage in this particular sexual behavior. Consent can be withdrawn at any time, and coercion, force, or threat of either invalidates the consent. An individual who is incapacitated (e.g., due to the use of alcohol or other drugs, is injured, is asleep or unconscious, or has a physical or mental disability) cannot consent. Silence or an absence of resistance does not imply consent.

#### Actual Knowledge

Actual knowledge means notice of sexual harassment or allegations of sexual harassment being given directly to the Title IX Coordinator or Deputy Title IX Coordinators.

## Coercion

Coercion occurs when someone is pressured, threatened, or compelled without the use of force to engage in sexual behavior. This can occur because of power imbalance between the parties. Additionally, repetition, threat of humiliation, or making someone believe they are obligated to engage in sexual behavior. Repetition of requests for sexual behavior is a common example of sexual coercion.

## Complainant

Complainant is an individual who is alleged to be the victim of conduct that could constitute sexual misconduct or sexual harassment.

## Document filed by complainant

A document or electronic submission (such as by electronic mail) that contains the complainant's digital or physical signature, or otherwise indicates that the complainant is the person filing the formal complaint.

## Formal Complaint

A formal complaint is a document filed by a complainant or signed by the Title IX Coordinator alleging sexual misconduct or sexual harassment against a respondent and requesting that the College investigate the allegation of sexual misconduct or sexual harassment. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the educational program or activity at MACC in which the formal complaint is filed.

## Force

Force can be threats of or actual physical violence to compel the complainant to engage in the sexual act. Force can also take on the form of coercion, threats to others, threats to humiliate, or intimidation. In instances of force, the victim often acquiesces and provides verbal agreement to engage in the behavior when actual consent is not provided.

## Hearing

A process conducted after the investigation in which the parties have the opportunity to present witnesses and evidence regarding the allegations of a policy violation. Hearings are conducted "live," although there may be opportunity to conduct the hearings virtually in some instances. Hearings are facilitated by a decision maker which can include one person or a panel. The parties are required to have an advisor. Hearings are recorded for appeal purposes.

## Incapacitation

Incapacitation is evidenced in sexual harassment and sexual violence when the complainant has indicated through behavior they are no longer able to make reasonable or rational decisions. Incapacitation can result because a person is unconscious, asleep, under the influence of drugs or alcohol, involuntary restraint, or suffers from permanent or temporary mental or physical health concerns, or has been provided drugs which lead to incapacitation. In cases of incapacitation, it is necessary for the respondent to have been reasonably able to tell a person was incapacitated.

## Investigation

Investigations are conducted when a formal complaint is submitted regarding a violation of this policy. The investigation is completed by one or more trained investigators. The investigation gathers evidence to determine relevance to the allegations, conducts interviews, and prepares a report. The investigation report does not indicate whether a policy violation occurs. The

investigation report indicates the credibility of evidence and witnesses related to the allegations.

#### Respondent

An individual who has been reported to be the perpetrator of conduct that could constitute sexual misconduct or sexual harassment.

#### Supportive measures

Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or respondent before or after filing of a formal complaint or where no formal complaint has been filed. Examples of supportive measures include but are not limited to, counseling; extensions of deadlines or other course related adjustments; modifications of work or class schedules; campus escort services; mutual restrictions on contact between the parties; changes in work or housing locations; increased security and monitoring of certain areas; leaves of absence; or other similar measures.

### **IV. Prohibited Conduct**

#### **Title IX Prohibited Conduct**

##### Dating Violence

Dating violence means violence which is committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim and where the existence of such a relationship shall be determined based on a consideration of the following factors including the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. Dating violence includes but is not limited to sexual or physical abuse or the threat of such abuse.

##### Domestic Violence

A felony or misdemeanor crime of violence committed by a current or former spouse or intimate partner of the victim; by 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; by a person similarly situated to a spouse of the victim under the domestic or family violence laws of jurisdiction.

##### Sexual Assault

Sexual assault means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation, it includes offenses that meet the definition of:

- Sex Offenses, Forcible—Any sexual act directed against another person, without the consent of the complainant including instances where the complainant is incapable of giving consent. This includes attempts to commit any of the below acts.
- 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 or not forcibly or against the person’s will (non-consensually) in

instances where the complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

- Sexual Assault With An Object—To use 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 or not forcibly or against the person's will (non-consensually) in instances where 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 where the complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- Sex Offenses, Nonforcible— Nonforcible sexual intercourse. This includes attempts to commit any of the below acts.
  - Incest—Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by state law.
  - Statutory Rape—Nonforcible sexual intercourse with a person who is under the statutory age of consent where the violation occurs.

### Stalking

Stalking is a course of conduct that is directed at a specific person, is unwelcome, and would cause a reasonable person to feel fear for their safety or the safety of others or suffer substantial emotional distress. The acts of a stalker may include, but are not limited to, following a person or making unwanted communication or unwanted contact with a person directly; indirectly; or through third parties.

### Quid Pro Quo Sexual Harassment

By a person having power or authority over another constitutes sexual harassment when submission to sexual conduct is made either explicitly or implicitly a term or condition of rating or evaluating an individual's educational or employment progress, developmental, or performance. This includes when submission to such conduct would be a condition for access to receiving the benefits of any educational or employment program.

### Hostile Environment

Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the college's education program or activity or alters the conditions of employment from both a subjective (the alleged victim's) and an objective (a reasonable person standard) viewpoint.

### Sexual Misconduct Prohibited Conduct

#### Dating Violence

Defined as in Title IX sexual misconduct with the inclusion of behavior which occurs outside of the United States, outside of the educational program or activity, or may be severe, pervasive, objectively offensive and has the effect of unreasonably interfering with an individual's work or

student's performance or has the effect of otherwise adversely affecting an individual's employment or education opportunities.

#### Domestic Violence

Defined as in Title IX sexual misconduct with the inclusion of behavior which occurs outside of the United States, outside of the educational program or activity, or may be severe, pervasive, objectively offensive and has the effect of unreasonably interfering with an individual's work or student's performance or has the effect of otherwise adversely affecting an individual's employment or education opportunities.

#### Hostile Environment

Defined as in Title IX sexual misconduct with the inclusion of behavior which occurs outside of the United States, outside of the educational program or activity, or may be severe, pervasive, objectively offensive and has the effect of unreasonably interfering with an individual's work or student's performance or has the effect of otherwise adversely affecting an individual's employment or education opportunities.

#### Sexual Assault

Defined as in Title IX sexual misconduct with the inclusion of behavior which occurs outside of the United States, outside of the educational program or activity, or may be severe, pervasive, objectively offensive and has the effect of unreasonably interfering with an individual's work or student's performance or has the effect of otherwise adversely affecting an individual's employment or education opportunities.

#### Sexual Exploitation

Sexual exploitation occurs when an individual takes non-consensual or abusive sexual advantage of another for his/her advantage or benefit or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of other sexual misconduct offenses. Examples of sexual exploitation include, but are not limited to, invasion of sexual privacy, prostituting another individual, non-consensual video or audio-taping of sexual activity, going beyond the boundaries of consent, engaging in voyeurism, knowingly transmitting an STD or HIV to another individual, exposing one's genitals in non-consensual circumstances, and inducing another to expose their genitals. Sexually-based stalking and/or bullying may also be forms of sexual exploitation.

#### Stalking

Defined as in Title IX sexual misconduct with the inclusion of behavior which occurs outside of the United States, outside of the educational program or activity, or may be severe, pervasive, objectively offensive and has the effect of unreasonably interfering with an individual's work or student's performance or has the effect of otherwise adversely affecting an individual's employment or education opportunities.

#### Intimidation

Intimidation is intentional behavior on the basis of sex that would cause a person of ordinary sensibilities fear of injury or harm.

#### Retaliation

Accused individuals and employees shall not intimidate, harass, coerce, or otherwise retaliate against individuals who report sexual discrimination, sexual harassment, or sexual assault; file a sexual misconduct complaint; assist someone in reporting sexual misconduct or filing a complaint; participate in any manner in an investigation of sexual misconduct; or protest any form of sexual misconduct.

#### **V. Title IX Coordinator**

It is the policy of Moberly Area Community College, in accord with providing a positive, discrimination-free educational and work environment, that sexual misconduct in the work place or the education environment is unacceptable behavior that will not be tolerated. Any student, employee, or visitor who believes they have witnessed or been the victim of sexual misconduct should report the incident to the Title IX Coordinator and or Deputy Coordinator as soon as possible following the incident. If the allegation is against the Title IX Coordinator, the report should then be made to the Director of Security and Residential Life.

MACC's Title IX Coordinator is responsible for coordinating all activities related to Title IX compliance. These responsibilities include ensuring policy compliance with federal and state laws; attending appropriate training; providing education of Deputy Title IX Coordinators; Title IX investigators, and decision makers; developing and implementing educational efforts designed to prevent sexual misconduct; ensuring timely resolution to all investigations and complaints; maintaining grievance files and records; developing an annual report of the number of and nature of filed complaints; and serving as principal contact for government inquiries pursuant to Title IX.

A complaint may be filed with the Title IX Coordinator and or Deputy Coordinator in person, by mail, or by electronic mail. A Sexual Misconduct Report Form is available on the MACC website, on MyMACC, and in hard copy in the Office of Student Affairs at each location. The Sexual Misconduct Report Form should be submitted to the Title IX Coordinator. An anonymous Sexual Misconduct Report Form can be submitted. Anonymous reports may limit the extent to which sexual misconduct can be investigated.

The Title IX Coordinator is appointed by the President of MACC. The coordinator receives training in state and federal laws, as well as College policy as related to Title IX. The Title IX Coordinator can be reached via phone, e-mail, or in person:

Cheryl Lybarger, Title IX Coordinator  
Director of Health Sciences  
Moberly Area Community College  
101 College Avenue  
Career Center - Room C18  
Moberly, MO 65270  
(660) 263-4100 ext. 11369 [cheryllybarger@macc.edu](mailto:cheryllybarger@macc.edu)

Aleesha Coke, Deputy Title IX Coordinator

Director of Site Operations & Student Affairs  
MACC Columbia Higher Education Center-Room 101  
601 Business Loop 70 West, Suite 216  
Columbia, MO 65203  
(573) 234-1067 ext. 12115  
[aleeshacoke@macc.edu](mailto:aleeshacoke@macc.edu)

Caroline Groves, Deputy Title IX Coordinator  
Director, MACC Mexico Higher Education Center—Room 106  
2900 Doreli Lane  
Mexico, MO 65265  
(573) 582-0817 ext. 13602  
[carolinegroves@macc.edu](mailto:carolinegroves@macc.edu)

Dee Coleman, Deputy Title IX Coordinator  
Director, MACC Kirksville Higher Education Center—Room 101  
2105 E. Normal Street  
Kirksville, MO 63501  
(660) 665-0345 ext. 15023  
[deecoleman@macc.edu](mailto:deecoleman@macc.edu)

Wendy Johnson, Deputy Title IX Coordinator  
Director, MACC Hannibal Area Higher Education Center—Room 103  
190 Shinn Lane  
Hannibal, MO 63401  
(573) 231-0941 ext. 14016  
[wendyjohanson@macc.edu](mailto:wendyjohanson@macc.edu)

While a sexual misconduct complaint or concern can be brought forth from many sources, they are all brought to the Title IX Coordinator for review. The Coordinator ensures that MACC's policy is followed and that the investigation is conducted promptly and thoroughly.

## **VI. Reporting and Confidentiality**

Any person may report sex discrimination, sexual misconduct, 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 any other means that results in the Title IX Coordinator receiving the persons verbal or written report. The report may be made at any time (including during non-business hours) by phone, electronic mail address or by mail to Cheryl Lybarger, Title IX Coordinator at 660-263-4100, ext. 11369 or [cheryll@macc.edu](mailto:cheryll@macc.edu).

Response to an allegation of sex discrimination, sexual misconduct or sexual harassment occurs upon MACC having actual knowledge of the allegation. The College will keep confidential the identity of complainants, respondents, and witnesses, except as may be permitted by FERPA, or as required by law, or as necessary to carry out a Title IX proceeding.

## **Responsible Employees (Mandated Reporters)**

All MACC employees are considered responsible employees (i.e., mandated reporters), and as such are expected to promptly contact the Title IX Coordinator when they become aware of an incident of sexual misconduct, regardless of whether the recipient is an employee, a student, a volunteer, or a visitor of the College.

When an individual tells a responsible employee about an incident of sexual misconduct, the individual has the right to expect that the responsible employee will notify the Title IX Coordinator. To the extent possible, information reported to a responsible employee will be shared only with people responsible for handling the College's response to the report.

Before an individual reveals any information about sexual misconduct to a responsible employee, the employee should ensure that the individual understands the employee's reporting obligations, and, if the individual wants to maintain confidentiality, direct the individual to confidential resources. If the individual wants to tell the responsible employee what happened but also maintain confidentiality, the employee should tell the individual that the College will consider the request but cannot guarantee that the College will be able to honor it. In reporting the details of the incident to the Title IX Coordinator, the responsible employee will also inform the Coordinator of the individual's request for confidentiality.

The information reported to the Title IX Coordinator may also be used (without the victim's name) to issue timely warnings, which are required by the Clery Act. If applicable, the incident must be reported in the Annual Security Report (anonymously, as a statistic), which is also mandated by the Clery Act.

### **Privileged and Confidential Communications**

MACC encourages victims of sexual misconduct to talk about their experience so they get the support they need. Should an individual decide not to pursue the incident by criminal or institutional processes, an individual can and should contact a confidential source to seek guidance.

Professional licensed counselors and pastoral counselors as well as non-professional counselors and advocates who provide mental health counseling or services to members of the school community (and including those who act in that role under the supervision of a licensed counselor) are not required to report any information about an incident to the Title IX Coordinator without a victim's permission. MACC does not offer on-site professional or pastoral counseling services; however, these confidential services are available off-site through the College's Employee/Student Assistance Program or through community agencies, such as those identified in Section II of this policy.

## **VII. Complaint Procedures**

Individuals who believe that they have encountered sexual misconduct by another employee or student of the College is encouraged to report the encounter to the Title IX Coordinator or Deputy Title IX Coordinator. The individual also has the option to make a criminal report to local authorities.

Any allegation of sexual harassment made by a student against a faculty member or MACC employee meeting the requirements of a Title IX complaint, must progress through the formal Title IX grievance process, informal resolution may not occur.

### **Criminal Complaint**

The option to pursue criminal charges is the complainant's choice. Victims of sexual misconduct should not assume that the College is aware of such conduct. Reporting sexual misconduct to a College official does not substitute for notification of appropriate law enforcement authorities. The Title IX Coordinator can assist a complainant in making a report to the police.

### **Complaints in Conjunction with Other Policy Violations**

In cases where an individual alleging sexual misconduct may also be involved in a violation of another MACC policy, such as the drug/alcohol policy or student conduct policy, the College will review these policy violations separately from the sexual misconduct allegation. The College encourages individuals to report when they have encountered sexual misconduct, despite their own involvement in other policy violations. The College will either grant amnesty to the complainant or respond to the other violation as an educational matter rather than as a disciplinary matter. The College's policy on the usage of alcohol and other drugs may be found in the Policy Handbook, item L.090 and M.100. The College's policy on student conduct may be found in the Policy Handbook, item M.096.

### **Formal Complaint**

A formal complaint of sexual misconduct, sex discrimination, sexual harassment may be filed with the Title IX Coordinator and or Deputy Title IX Coordinator in person, by mail or by electronic mail. A Sexual Misconduct Report Form is available, located in electronic format on the MACC website and MyMACC, and in hard copy in the Office of Student Affairs at each location. All Sexual Misconduct Report Forms will be forwarded to the Title IX Coordinator. Statistical information without identifying information will be forwarded to the Director of Security and Residential Life for Clery Reporting. Clery Reporting does not indicate names or other identifying information of the parties involved. Information related to an ongoing threat to the campus community may also be forwarded to the Director of Security and Residential Life for a Timely Warning or Emergency Notification. In instances of a Timely Warning or Emergency Notification, complainant information is not shared publicly.

Upon receipt of formal written complaint, allegations meeting the requirements of sexual harassment as defined in 34 CFR 106.30(a) will be processed through the formal Title IX Grievance Process, which is outlined in section IX. The alleged conduct must meet one or more of the definitions of Title IX Prohibited Conduct (Please see section IV, Prohibited Conduct). Title IX Prohibited Sexual Misconduct must have occurred within the United States and within an educational program or activity sponsored by MACC. This includes locations, events, or circumstances in which MACC exercises substantial control over both the respondent and the context in which the sexual harassment occurs and also includes any building owned or controlled by MACC.

If the allegations in the formal complaint do not meet the definition of Title IX Prohibited Sexual Misconduct or did not occur in the school's education program or activity against a person in the United States, MACC will dismiss such allegations for purposes of Title IX. Allegations of sexual harassment which are dismissed for the purposes of Title IX for not meeting the definitions of Title IX Prohibited Conduct will be assessed for a policy violation under the definitions of Sexual Misconduct Prohibited Conduct and Sexual Misconduct Grievance Process. If a formal complaint of sexual harassment is dismissed under the Sexual Misconduct Grievance Process, it may be pursued under other MACC policies and procedures.

## **VIII. Prevention and Education**

MACC fosters a culture of respect amongst the campus community with its vision and value statements and by its setting of standards and expectations that are reinforced by the College's conduct, complaint, and sexual misconduct policies. Literature on date rape education and risk reduction, as well as MACC response, is available through the MACC Security Office. Educational resources are available online through the Student Assistance Program and Employee Assistance Program at <http://www.hhhealthassociates.com>. Additionally, the Director of Security and Residential Life conducts a climate survey on an annual basis in order to better understand sexual misconduct as perceived by MACC students and employees. Information gathered from this assessment tool is used to determine further training and/or prevention efforts needed.

All MACC employees are required to complete training on preventing sexual violence and discrimination within their first thirty days of employment. An online resource is used to provide and track employee training. MACC also provides training for employees by hosting speakers on topics such as sexual harassment prevention. Additionally, key personnel attend seminars and workshops on Title IX, the Clery Act, and more.

For students, MACC also utilizes online training that covers topics related to the Clery Act, VAWA, and Title IX, such as students' rights and responsibilities; preventing sexual violence, dating violence, stalking, harassment and bullying; navigating partying, drugs and alcohol; and acting as allies for others in need. The online resource covers a full range of topics related to the Campus SaVE Act, including Sexual Violence; Bystander Intervention; "Men as Allies;" Concepts of Consent, No-Consent, and Continuous Consent; Gender Sensitivity; and Use of Drugs and Alcohol. Dorm residents, student athletes, cheerleaders, and any student that travels are required to complete training through the online program; however, the training is available to all MACC students. Additionally, MACC educates students about sexual assault and date rape prevention during fall orientations and through informational programs available upon request.

## **IX. Title IX Grievance Process**

In compliance with the revised Title IX regulations (34 CFR Part 106), Moberly Area Community College has developed a grievance process to address formal complaints of sexual harassment, as a form of prohibited sexual discrimination.

In order for a formal complaint of sexual harassment to be reviewed and/or resolved through the Title IX Grievance Process, it must consist of prohibited conduct outlined in section IV.

The Title IX Grievance Process is available when a formal complaint falls within the College's Title IX jurisdiction, which includes locations, events or circumstances over which the College exercises substantial control over the Respondent and the context in which the sexual harassment occurs; the conduct is having or had negative impacts on a Complainant's ability to effectively access and continue in the College's educational program, and which occurs in the United States.

The Title IX Coordinator has the authority to consolidate formal complaints involving more than one complainant, or against more than one Respondent, where the allegations of sex discrimination or sexual harassment arise out of the same facts or circumstances.

Under very limited circumstances, the Title IX Coordinator may exercise the authority to sign a formal

complaint and trigger the grievance process on behalf of the College. In those cases, the Title IX Coordinator is not assuming the role of complainant or any other party and must otherwise comply with regulatory duties as prescribed in this Regulation under 34 CFR Part 106.

### **Initial Assessment**

Upon receipt of report of sexual harassment meeting the criteria for review under this grievance process, the Title IX Coordinator will promptly respond to the Complainant and provide advice for the following:

- Availability of supportive measures with or without filing a formal complaint;
- Availability of informal resolution options;
- The process for filing a formal complaint;
- The rights and responsibilities of a Complainant throughout the grievance process.

After a formal report has been received, the Title IX Coordinator is responsible for providing written notice to the Respondent regarding all pertinent details of the report. In order to treat both the Complainant and the Respondent equitably, the Title IX Coordinator will meet with the Respondent to provide advice for the following:

- Availability of supportive measures;
- Availability of informal resolution options;
- Assumption of non-responsibility throughout the grievance process;
- The rights and responsibilities of a Respondent throughout the grievance process.

### **Dismissal of Complaints**

#### *Mandated Dismissals*

If the conduct alleged in the formal complaint would not constitute sexual harassment as defined in 34 CFR, Section 106.8 even if proved, did not occur in a Moberly Area Community College education program or activity or it did not occur against a person in the United States, the formal complaint will be dismissed with regard to that conduct for purposes of sexual harassment under title IX. Such dismissal does not preclude action under another provision of another policy. Dismissal of a formal complaint occurring due to the allegation not meeting the definition of sexual harassment, yet in violation of policy will be addressed as appropriate based upon applicable policy, which includes but is not limited to student conduct; employee discipline policy; employee handbook.

#### *Discretionary Dismissals*

MACC may dismiss a formal complaint or any allegation therein at the discretion of the Title IX coordinator, if at any time during the investigation or hearing, a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegation therein; or the respondent is no longer enrolled or employed at MACC; or specific circumstances prevent MACC from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon determining that a formal complaint will be dismissed, both parties will receive written notice of the dismissal and the reason(s) simultaneously.

## **Emergency Removal**

In limited situations, the respondent may be removed from MACC's educational program or activity on an emergency basis because they pose an immediate threat to the campus community, or cannot otherwise safely participate in an education program or activity while the Title IX Grievance Process is being conducted. In cooperation with the College's Behavioral Intervention Team, an individualized risk/threat assessment will be conducted to determine whether an immediate physical threat to the health or safety of the respondent or the campus community arising from the formal sexual harassment complaint would justify removal from campus.

If emergency removal of the respondent is deemed necessary as defined above, the respondent will be provided with written notice of the decision and an opportunity to challenge the decision immediately following the removal.

## **Administrative Leave**

A non-student employee respondent may be placed on administrative leave during any part, or the full duration, of Title IX Grievance Process in cooperation with Human Resources.

## **Informal Resolution**

Moberly Area Community College does not require the parties to participate in an informal resolution process. However, at any time prior to reaching a determination regarding responsibility, MACC will support facilitating an informal resolution process that does not involve a full investigation and adjudication provided that both the Complainant and Respondent are equally and voluntarily agreeable to participating. Additionally, the Respondent must accept responsibility for the policy violation in order to participate in informal resolution.

The option of resolving a formal complaint through Informal Resolution will be offered to both parties by the Title IX Coordinator at the initial assessment meetings if it is determined appropriate by the college. Not all allegations of sexual harassment are appropriate to be resolved in an informal resolution. The complainant, respondent and college must agree it is an appropriate resolution process. The decision to stop formal proceedings and engage in an Informal Resolution may be made at any time during the grievance process, with the voluntary written consent of both the Complainant and the Respondent and agreement by the college. Likewise, a Complainant or Respondent has the right to withdraw from an Informal Resolution process and resume the Title IX Grievance Process at any time with respect to the formal complaint. After initiating and stopping the informal resolution process one time by either party the informal resolution process is no longer an option.

Participation in an Informal Resolution process in lieu of the full investigation and live hearing associated with the title IX Grievance Process shall not be a condition of enrollment or continuing enrollment, employment or continuing employment, or waiver of the right to an investigation and live hearing of the formal complaint.

An Informal Resolution process is not allowed in regards to allegations that an employee sexually harassed a student.

## **Investigation of a Formal Complaint**

When an Informal Resolution is not a reasonable option for resolving a formal complaint, a prompt, fair and impartial investigation will occur. The Title IX Coordinator will assign one or more Title IX Investigators, who are free from conflicts of interest or bias for or against either the Complainant or Respondent. The investigators will meet with both the Complainant and Respondent, individually, to engage in the objective collection and evaluation of relevant evidence. Both Complainant and Respondents are entitled to identification of witnesses and submission of inculpatory (demonstrates to finding of responsibility) and exculpatory (demonstrates to finding that respondent did not engage in the allegation) evidence. The parties may also suggest questions to be asked of the other party (or parties) or witnesses. It is the investigator's discretion which questions are asked.

Investigators will provide written notice of the date, time, location, and participants prior to investigative interviews or other meetings. The party will have no less than 10 business days to prepare to participate in the interview/meeting. The parties are permitted to have an advisor of their choice at any interview.

Investigators may contact the Title IX Coordinator during the investigative process with procedural questions which are not directly related to the evidence. At no time should the investigators confer with other Title IX Grievance Process personnel regarding details of the formal complaint until the end of the appellate process. However, there is no restriction on the ability of either the Complainant or Respondent to discuss the allegations under investigation or to gather and present relevant evidence.

The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility for sexual harassment rests with the College and not on the parties.

### **Review of Evidence and Comment Period**

Once the investigation has concluded and the draft report is written, both the Complainant and the Respondent will have access to the draft report and all evidence gathered during the investigation, including that which the investigators did not deem relevant. The Complainant and the Respondent will have the opportunity to provide meaningful written comment on the draft report and evidence during a period of no less than 10 business days. The investigative report is not to draw conclusions of violation of policy. The investigation report should indicate which evidence, according to the investigators, is relevant and analyze the evidence for credibility.

### **Review of Investigative Report**

After the 10 business day review of the draft report, the investigators should take any written comment provided by the parties and make any appropriate amendments to the final investigative report. Changes to the report are at the investigators discretion. The written comment provided by the parties now becomes part of the evidentiary record. The final draft of the Investigator Report will be made available to both the Complainant and the Respondent for a period of no less than 10 business days before the live hearing and cross examination.

### **Title IX Grievance Process Advisors**

Both Complainants and Respondents have equal rights to engage the assistance of a grievance process advisor of their choosing during any meeting or proceeding including the live hearing. If either party is not able to identify an advisor of their choice, a Title IX Grievance Process Advisor will be appointed by the Title IX Coordinator to assist them at no cost to the individual. The presence of such a grievance process

advisor, either self-selected or College-appointed, is required on behalf of both the Complainant and the Respondent to conduct cross examination during the live hearing. At no time will a Complainant or Respondent be allowed to conduct cross examination of witnesses or the other party personally. Questioning by advisors during the live hearing will be conducted from a seated position and in a professional tone.

#### Pre-Hearing Conference

The hearing officer will conduct a pre-hearing conference with the parties and their advisors prior to the hearing. The conference may be conducted with all parties present or individually with each party depending on the context of the allegations and the parties. The pre-hearing conference is designed to address relevance regarding lines of questioning or specific questions (which can be reviewed at the hearing as well), the hearing agenda, process and procedure questions, and other questions the parties may have. The pre-hearing conference is not recorded.

The complainant and respondent are required to submit questions to the Hearing Officer in order to determine relevancy and compliance with the rules of decorum. Any questions deemed not relevant by the Hearing Officer, and thereby excluded from the live hearing, will be communicated in writing to the party submitting the question(s).

#### Live Hearing and Cross Examination

A live hearing will be conducted by a Hearing Officer (decision maker) as designated by the College in order to reach a finding regarding the allegation of a policy violation for sexual harassment under this Policy. The Complainant and Respondent will be permitted to submit inculpatory (demonstrates to finding of responsibility) and exculpatory (demonstrates to finding that respondent did not engage in the allegation) evidence relevant to the allegation. The parties may also provide witnesses in addition to their own testimony. The hearing officer may ask questions of the parties and their witnesses. Each witness will answer direct-examination and cross examination questions.

At the request of either party, MACC will provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decision maker(s) and parties to simultaneously see and hear the party or the witness answering questions.

The hearing will be conducted in the following order:

1. Welcome and explanations of expectations and procedures
2. Testimony of the investigator(s)
3. Testimony of the Complainant and Complainant's witnesses
4. Testimony of the Respondent and Respondent witnesses
5. Testimony of hearing officer witnesses
6. Conclusion of the hearing and expected timeline for notification of finding and possible sanction.

The process of examining a witness will be as follows:

1. The witness will be asked questions from the hearing officer.
2. The witness will be asked direct-examination questions from the party who requested their presence.
3. The witness will be asked cross-examination questions from the party who did not request their presence.

After each question asked (direct or cross-examination) the hearing officer will determine relevance. The

witness will not answer questions from either parties' advisors until relevance has been determined. The appropriateness of a question is often determined by relevance to the allegation, repetition, and whether the question may be abusive. The parties' advisors may not ask questions of past sexual history (there may be exceptions regarding past sexual history of the parties, pattern, or evidence of the Complainant's history which would indicate someone other than the Respondent committed the act).

If a witness does not submit to cross-examination, neither their statements in the investigation or evidence submitted regarding their statements (emails, text messages, etc.) can be considered in the decision making process. If a witness only answers some of the cross-examination questions, only the information related to the answered cross-examination questions can be considered in the decision making process. Additionally, the Hearing Officer cannot reach a determination of responsibility solely on a party's or witness's absence from the live hearing or refusal to submit to cross examination.

At no time during the investigation or the live hearing with either Complaint or Respondent be subjected to questions that constitute, or seek disclosure or, information protected under a legally recognized privilege (unless such privilege has been voluntarily waived). Likewise, neither Complainant nor Respondent will be subjected to questions about sexual predisposition, previous sexual behavior or other circumstances protected under federal and state rape shield laws.

The live hearing will be recorded and/or transcribed only by MACC. The parties, their advisors, and anyone else present may not record any part of the hearing in any manner.

### **Final Determination and Remedies**

After a thorough examination of the evidence presented, reviewing the investigative report, and direct- and cross-examination by witnesses during the live hearing, the Hearing Officer will make a final determination of "responsible" or "not responsible" for violations of this policy and regulation using the preponderance of the evidence standard. The preponderance of the evidence standard indicates the evidence demonstrates it is more likely than not the Respondent engaged in conduct that meets the College's definition of sexual harassment or did not engage in conduct that meets the College's definition of sexual harassment. This same standard is used for formal complaints of sexual harassment against students as well as for formal complaints of sexual harassment against employees.

The Hearing Officer is responsible for drafting a Final Determination letter, outlining the rationale for his/her decision. The letter will be distributed simultaneously to both the Complainant and the Respondent by the Title IX Coordinator. The final determination letter will include:

- Identification of the allegations constituting sexual harassment;
- A description of the procedural steps taken from the receipt of the formal complaint through the determination;
- Findings of fact supporting the determination;
- Conclusions and rationale;
- Recommendations for disciplinary sanctions and possible remedies.

The Title IX Coordinator will work with appropriate college personnel to implement disciplinary sanctions and to provide effective implementation of any remedies.

The determination regarding responsibility becomes final on the date which an appeal can no longer be considered, if no appeal is filed. If an appeal is filed, the final determination of responsibility becomes

final on the date of the appeals officers written determination is provided simultaneously to both the complainant and the respondent.

### **Appeals of Final Determinations and Dismissals**

Both parties are provided the opportunity to appeal a determination regarding responsibility, as well as, a dismissal of a formal complaint. Appeals are to be submitted in writing within 10 business days from the date written notice was provided. Appeals of such decisions within the Title IX Grievance process are allowed on the following bases:

1. Procedural irregularity that affected the outcome of the matter;
2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
3. The Title IX Coordinator, investigator(s), or decision maker(s) had a conflict of interest or bias for or against the complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

When an appeal is filed, the Title IX Coordinator will notify the other party in writing that the appeal has been filed. Additionally, the College will ensure that the decision maker(s) for the appeal is not the same person as the decision maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator.

A written decision of the appeal, describing the result of the appeal and the rationale for the result will be given simultaneously to both parties.

### **Retaliation**

No person having made a report or formal complaint, participated in or refused participation in any part of the Title IX Grievance Process should be subjected to intimidation, threats, coercion, or discrimination for the purpose of interfering with any right or privilege secured by Title IX. Such conduct is strictly prohibited. Instances of retaliation within this policy will be adjudicated through this policy.

### **Retention of Title IX Grievance Process Files**

MACC will maintain copies of the following documents/records relating to formal complaints of sexual harassment for no less than 7 years:

1. Each sexual harassment investigation reports and evidence gathered;
2. Final determination letters and disciplinary sanctions imposed on the respondent;
3. Audio or audiovisual recordings or transcript of live hearings;
4. Remedies provided to the complainant in order to restore or preserve equal access to the College's education program or activity;
5. Any appeal and the result therefrom;
6. Informal resolution agreements;
7. Supportive measures offered in response to a report or formal complaint of sexual harassment;
8. Written basis for the conclusion that the College was not deliberately indifferent in its response to reports for formal complaints of sexual harassment; and
9. The College will retain all materials used to train Title IX Coordinators, investigators, decision makers and any person who facilitates an informal resolution process.

For each response to sexual harassment allegations, the College will create and maintain for a period of 7 years, records of any actions, including any supportive measures taken in response to a report or formal complaint of sexual harassment. In each instance, the College will document the basis for its conclusion and its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the College's education program or activity.

If MACC does not provide a complainant with supportive measures, then the College must document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

### **Remedies and Sanctions**

Upon a determination of responsibility of the respondent, MACC may implement a range of remedies and sanctions.

Remedies are designed to restore or preserve the complainant's equal access to the College's educational program or activity and may include but not be limited to the following:

- Mutual restrictions on contact between the parties
- Modification of a class schedule
- Modification of residence hall assignments
- Modification of work schedules
- Arranging extended time to complete or retake a class or withdraw from a class without penalty

Sanctions are non-supportive measures imposed upon the respondent:

If an employee of the College is found to have violated the College's sexual misconduct policy, possible outcomes may include but not be limited to the following: verbal warning, written warning in the individual's personnel file, probation, suspension, reassignment of duties or location, demotion, suspension of pay increase for one or more year, required counseling or programming, restricted contact with the complainant, and/or termination.

If a student is found to have violated the College's sexual misconduct policy, possible outcomes may include but not be limited to the following: restricted access to College property and/or events, removal from College-sponsored teams or clubs, required counseling or programming, changes to course/class schedule, removal from or change in campus housing, restricted contact with complainant, probation, suspension, and expulsion.

## **X. Sexual Misconduct Grievance Process**

### **Formal Complaints**

Reports of sexual harassment must first be considered under the Title IX Grievance Process. Any formal complaint of sexual harassment which is dismissed under the Title IX Grievance Process will then be reviewed under the Sexual Misconduct Grievance Process. As the Sexual Misconduct Grievance Process only handles formal complaints which have been dismissed under the Title IX Grievance Process and therefore 34 CFR Part 106.30, the definitions of sexual harassment under Sexual Misconduct Prohibited Conduct will be used and 34 CFR Part 106.45 does not apply.

### **Initial Assessment**

Upon receipt of report of sexual harassment meeting the criteria for review under this grievance process,

the Title IX Coordinator will promptly respond to the Complainant and provide advice for the following:

- Availability of supportive measures with or without filing a formal complaint;
- Availability of informal resolution options;
- The process for filing a formal complaint;
- The rights and responsibilities of a Complainant throughout the grievance process.

After a formal report has been received, the Title IX Coordinator will conduct an initial assessment to determine if the report has the potential for a policy violation. If the report with all facts accepted indicates the potential for a violation, then an investigation will be initiated and the Respondent will be notified. If the report does not indicate the potential for a violation with all facts accepted, then the complainant will be notified an investigation will not be initiated with a written explanation as to why.

If an investigation is initiated, the Title IX Coordinator is responsible for providing written notice to the Respondent regarding all pertinent details of the report. In order to treat both the Complainant and the Respondent equitably, the Title IX Coordinator will meet with the Respondent to provide advice for the following:

- Availability of supportive measures;
- Availability of informal resolution options;
- Assumption of non-responsibility throughout the grievance process;
- The rights and responsibilities of a Respondent throughout the grievance process.

#### Emergency Removal

In limited situations, the Respondent may be removed from MACC's educational program or activity on an emergency basis because they pose an immediate threat to the campus community, or cannot otherwise safely participate in an education program or activity while the Sexual Misconduct Grievance Process is being conducted. In cooperation with the College's Behavioral Intervention Team, an individualized risk/threat assessment will be conducted to determine whether an immediate physical threat to the health or safety of the Respondent or the campus community arising from the formal sexual harassment complaint would justify removal from campus.

If emergency removal of the Respondent is deemed necessary as defined above, the Respondent will be provided with written notice of the decision and an opportunity to challenge the decision immediately following the removal.

#### Administrative Leave

A non-student employee respondent may be placed on administrative leave during any part, or the full duration, of Title IX Grievance Process in cooperation with Human Resources.

#### Informal Resolution

Moberly Area Community College does not require the parties to participate in an informal resolution process. However, at any time prior to reaching a determination regarding responsibility, MACC may offer an informal resolution process that does not involve a full investigation both the Complainant and Respondent are equally and voluntarily agreeable to participating. Additionally, the Respondent must accept responsibility for the policy violation in order to participate in informal resolution.

The option of resolving a formal complaint through Informal Resolution will be offered to both parties by

the Title IX Coordinator at the initial assessment meetings if it is determined appropriate by the college. Not all allegations of sexual harassment are appropriate to be resolved in an informal resolution. The complainant, respondent, and college must agree it is an appropriate resolution process. The decision to stop formal proceedings and engage in an Informal Resolution may be made at any time during the grievance process, with the voluntary written consent of both the Complainant and the Respondent and agreement by the college. Likewise, a Complainant or Respondent has the right to withdraw from an Informal Resolution process and resume the Sexual Misconduct Grievance Process at any time with respect to the formal complaint. After initiating and stopping the informal resolution process one time by either party, the informal resolution process is no longer an option.

Participation in an Informal Resolution process in lieu of the full investigation associated with the Sexual Misconduct Grievance Process shall not be a condition of enrollment or continuing enrollment, employment or continuing employment, or waiver of the right to an investigation and live hearing of the formal complaint.

#### Investigation of a Formal Complaint

When an Informal Resolution is not a reasonable option for resolving a formal complaint, a prompt, fair and impartial investigation will occur. The Title IX Coordinator will assign one or more Investigators, who are free from known conflicts of interest or bias for or against either the Complainant or Respondent. The investigators will meet with both the Complainant and Respondent, individually, to engage in the objective collection and evaluation of relevant evidence. Both Complainant and Respondents are entitled to identification of witnesses and submission of inculpatory (demonstrates to finding of responsibility) and exculpatory (demonstrates to finding that respondent did not engage in the allegation) evidence. The parties may also suggest questions to be asked of the other party (or parties) or witnesses. It is the investigator's discretion which questions are asked.

Investigators will provide written notice of the date, time, location, and participants prior to investigative interviews or other meetings. The party will have no less than 5 business days to prepare to participate in the interview/meeting. The parties are permitted to have an advisor of their choice at any interview.

Investigators may contact the Title IX Coordinator during the investigative process with procedural questions which are not directly related to the evidence. At no time should the investigators confer with other Title IX Grievance Process personnel regarding details of the formal complaint until the end of the appellate process. However, there is no restriction on the ability of either the Complainant or Respondent to discuss the allegations under investigation or to gather and present relevant evidence.

The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility for sexual harassment rests with the College and not on the parties.

#### Review of Evidence and Comment Period

Once the investigation has concluded and the draft report is written, both the Complainant and the Respondent will have access to the draft report and all evidence gathered during the investigation, including that which the investigators did not deem relevant. The Complainant and the Respondent will have the opportunity to provide meaningful written comment on the draft report and evidence during a period of no less than ten (10) business days. The investigative report will include a finding and a recommended sanction. The investigator will complete a final report after receiving the feedback from the parties or once the ten (10) days have concluded. The final investigative report will be shared with

the parties no more than ten (10) days after the review period has concluded.

#### Final Investigative Report

After a thorough examination of the evidence, the investigator(s) will make a final determination of “responsible” or “not responsible” for violations of this policy using the preponderance of the evidence standard in the final investigative report. The preponderance of evidence standard indicates the evidence demonstrates it is more likely than not the Respondent engaged in conduct that meets the College’s definition of sexual harassment or did not engage in conduct that meets the College’s definition of sexual harassment. This same standard is used for formal complaints of sexual harassment against students as well as for formal complaints of sexual harassment against employees.

The final investigative report will be shared with the parties simultaneously. The final investigative report will include:

- Identification of the allegations constituting sexual harassment;
- A description of the procedural steps taken from the receipt of the formal complaint through the determination;
- Findings of fact supporting the determination;
- Conclusions and rationale;
- Recommendations for disciplinary sanctions and possible remedies.

The Title IX Coordinator will work with appropriate College personnel to implement disciplinary sanctions and to provide effective implementation of any remedies.

The determination regarding responsibility becomes final on the date which an appeal can no longer be considered, if no appeal is filed. If an appeal is filed, the final determination of responsibility becomes final on the date of the appeals officers written determination is provided simultaneously to both the complainant and the respondent.

#### Appeals of Finding

Both parties are provided the opportunity to appeal a finding of in violation or not in violation. Appeals are to be submitted in writing within ten (10) business days from the date written notice was provided. Appeals of such decisions within the Sexual Misconduct Grievance process are allowed on the following bases:

1. Procedural irregularity that affected the outcome of the matter;
2. New evidence that was not reasonably available at the time the determination regarding responsibility that could affect the outcome of the matter; and
3. The Title IX Coordinator or investigator(s) had a conflict of interest or bias for or against the Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.

When an appeal is filed, the Title IX Coordinator will notify the other party in writing that the appeal has been filed. Additionally, the College will ensure that the decision maker(s) for the appeal is not the same person as the investigator(s) or the Title IX Coordinator.

A written decision of the appeal, describing the result of the appeal and the rationale for the result will be

provided simultaneously to both parties and within ten (10) days of the appeal.

#### Retaliation

No person having made a report or formal complaint, participated in or refused participation in any part of the Sexual Misconduct Grievance Process should be subjected to intimidation, threats, coercion, or discrimination. Such conduct is strictly prohibited. Instances of retaliation within this policy will be adjudicated through this policy.

#### Retention of Sexual Misconduct Grievance Process Files

MACC will maintain copies of the following documents/records relating to formal complaints of sexual harassment for no less than 7 years:

1. Each sexual harassment investigation reports and evidence gathered;
2. Final determination letters and disciplinary sanctions imposed on the respondent;
3. Audio or audiovisual recordings or transcript of live hearings;
4. Remedies provided to the complainant in order to restore or preserve equal access to the College's education program or activity;
5. Any appeal and the result therefrom;
6. Informal resolution agreements;
7. Supportive measures offered in respond to a report or formal complaint of sexual harassment;
8. Written basis for the conclusion that the College was not deliberately indifferent in its response to reports for formal complaints of sexual harassment; and
9. The College will retain all materials used to train Title IX Coordinators, investigators, decision makers and any person who facilitates an informal resolution process.
10. If MACC does not provide a complainant with supportive measures, then the College must document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

#### Remedies and Sanctions

Upon a determination of responsibility of the respondent, MACC may implement a range of remedies and sanctions.

Remedies are designed to restore or preserve the Complainant's equal access to the College's educational program or activity and may include but not be limited to the following:

- Mutual restrictions on contact between the parties
- Modification of a class schedule
- Modification of residence hall assignments
- Modification of work schedules
- Arranging extended time to complete or retake a class or withdraw from a class without penalty

Sanctions are non-supportive measures imposed upon the Respondent:

If an employee of the College is found to have violated the College's sexual misconduct policy, possible outcomes may include but not be limited to the following verbal warning, written warning in the individual's personnel file, probation, suspension, reassignment of duties or location, demotion, suspension of pay increase for one or more year, required counseling or programming, restrict contact with the complainant, and/or termination.

If a student is found to have violated the College's sexual misconduct policy, possible outcomes may include but not be limited to the following restricted access to College property and/or events, removal from College-sponsored teams or clubs, required counseling or programming, changes to course/class schedule, removal from or change in campus housing, restrict contact with complainant, probation, suspension, and expulsion.

#### **XI. Policy Monitoring**

MACC's Compliance Committee and Title IX Coordinator continually examine the Sexual Misconduct Policy to ensure that the policy is effective and understandable for community members. All policy revisions and updates will be reviewed and approved by the MACC President's Council and the MACC Board of Trustees. In addition, MACC's Director of Security and Residential Life and Director of Plant Operations work continuously to ensure that all MACC sites are safe and secure educational environments.