

Chapter: Personnel

Modification No. 005

Subject: Sexual Misconduct

I. Introduction

A. Montgomery College is committed to establishing and maintaining an environment in which all members of the Montgomery College community can work and participate in College education programs and activities free from all forms of sexual misconduct, as defined in Section II below. Sexual misconduct will not be tolerated and the College will consider any violation as a significant act of misconduct that will result in disciplinary action. When made aware, the College will take immediate action to stop the misconduct, prevent its recurrence, and remedy its effects. The resolution processes described herein relating to reports of sexual misconduct will be prompt, thorough, and impartial and provide a meaningful opportunity for each party to be heard. The process will be conducted by College officials who, at minimum, receive annual training on issues related to sexual misconduct.

B. Complainant and Respondent Rights

1. Treatment with dignity, respect, and sensitivity by the official of the College during all phases of the disciplinary process.
2. A fair and impartial investigation.
3. Disciplinary proceedings and resolutions that are prompt and equitable and provide an opportunity for the complainant and respondent to be heard, including the provision of a live hearing.
4. Availability of Supportive Measures, regardless of whether if a formal complaint is filed.
5. Timely written notice of:
 - a. The reported violation, including date, time, and location of the alleged violation;
 - b. The availability of informal resolution options;
 - c. The range of potential sanctions associated with the alleged violation;
 - d. The parties' rights and responsibilities under the sexual misconduct policy and information regarding other civil and criminal options;
 - e. The date, time, and location of each hearing, meeting, or interview that the parties are required or permitted to attend;
 - f. A final determination made by the College regarding whether or not a violation occurred and the basis for the determination;
 - g. Any sanction imposed; and
 - h. The right to appeal and a description of the appeal process.
6. Participation in the disciplinary proceedings, including:

- 49 a. Access to the case file and evidence regarding the incident
- 50 obtained by the College during the investigation or considered by
- 51 the College, with personally identifiable or other information
- 52 redacted as required by applicable law;
- 53 b. Offering testimony during the proceedings;
- 54 c. Submitting evidence, witness lists, and suggested specific
- 55 questions to be posed to the other party(ies) involved in the
- 56 disciplinary proceedings;
- 57 d. Providing and reviewing testimony electronically or in a way in
- 58 which the parties are not required to be in the physical presence
- 59 of the other;
- 60 e. Reviewing and providing written responses to the investigation
- 61 reports, and proposed findings; and
- 62 f. Appealing a determination or sanction.

Commented [RKJ1]: To reflect what's required in the regulations and to reflect practice.

Commented [RKJ2]: To reflect what's required in regulations and for clarity.

C. Nothing in this Procedure shall supersede the legal obligations of a College employee or the College to comply with mandatory reporting laws, such as those applicable to sexual or other abuse of minors. In all cases, College employees and the College will comply with Montgomery College Policy 75005-Protection of Minors.

II. Applicability

Sexual misconduct is prohibited between students, between employees, between students and employees, and by students or employees against contractors, vendors, or other individuals whose relationship to the student or employee is through the College's facilities, programs, or activities. Similarly, the College will not tolerate sexual misconduct by College contractors, vendors, or other third parties, including visitors and guests to the College, whose relationship to the victim is through the College's facilities, programs, or activities.

- A. These procedures apply regardless of the sex, sexual orientation, or gender identity and expression of either the perpetrator or the victim of sexual misconduct.
- B. These procedures apply to sexual misconduct that:
 - 1. occurs on College premises, including any property owned or leased by the College (including College vehicles) or that the College has permission to occupy for purposes of conducting a College-sponsored program or event;
 - 2. occurs in connection with any College-sponsored, College-recognized, or College-approved activities within the United States (e.g., off-campus education programs and activities such as College-sponsored field trips, athletic team travel, and events for officially -recognized College clubs that occur off campus, and social activities for employees sponsored by the College or relating to the business of the College);
 - 3. occurs during business travel within the United States or otherwise in connection with College-related business; and,
 - 4. sexual harassment on or off campus in any College program or activity

Commented [FA3]: We have programs abroad.

Commented [RJ4R3]: The regs specify that if the conduct alleged "did not occur against a person in the United States, then the recipient must dismiss" the complaint under title IX. 34 C.F.R. § 106.45(b)(3)(i). The 2020 updates to the regulations dictated that study abroad programs do not fall under the jurisdiction of Title IX.

Commented [RKJ5R3]: The regulation cited above prohibits the College from including study abroad programs under Title IX. We will monitor for changes to Title IX regulations in spring 2023. If this doesn't change we can specify another process.

102 that impacts equal educational access.

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104 D. All incidents of sexual misconduct should be reported so that the College may
105 determine whether the conduct falls within the scope of the Policy and may
106 respond appropriately under these procedures.

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108 III. Definitions

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110 The following capitalized defined terms are used throughout the Procedure:

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112 A. ~~Attorney/Non-Attorney Advisor – an individual selected by a Complainant or~~
113 ~~Respondent to be present at any part of the College processes related to a report~~
114 ~~under this Procedure. The role of the Attorney or Non-Attorney Advisor is limited~~
115 ~~to providing advice and consultation directly to the Complainant or Respondent~~
116 ~~(i.e., the Attorney or Non-Attorney Advisor is not to take an active representation~~
117 ~~role under this Procedure on behalf of the Complainant or Respondent, as an~~
118 ~~Attorney would do in a formal legal proceeding). A person chosen by a party or~~
119 ~~appointed by the institution to accompany the party to meetings related to the~~
120 ~~resolution process, to advise the party on that process, and to conduct~~
121 ~~questioning for the party at the hearing, if any.~~

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123 B. Complainant - refers to an individual who is alleged to be the victim of
124 conduct that could constitute sexual harassment.

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126 C. Confidential Resource – specific College employees whose role under this
127 procedure is limited to providing confidential support and guidance to any
128 individuals who wish to discuss alleged incidents of sexual misconduct.
129 Confidential resources are specific College employees who are not considered to
130 be Mandated Reporters and therefore are not required to notify the Title IX
131 Coordinator (or alternatively, if the sexual misconduct is by or against an
132 employee, the Director of Employee and Labor Relations) upon receipt of a
133 report of sexual misconduct.

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135 D. Consent – a knowing, voluntary, and affirmatively communicated willingness to
136 participate in a particular sexual activity or behavior. Only a person who has the
137 ability and capacity to exercise free will and make rational, reasonable judgment
138 can give Consent. Consent may be expressed either by words and/or by actions
139 as long as those words and/or actions create a mutually understandable
140 agreement to engage in specific sexual activity. It is the responsibility of the
141 person who wants to engage in sexual activity to ensure that they have consent
142 from the other party, and that the other party is capable of providing consent.

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144 1. Lack of protest or resistance is not consent, nor may silence, in and of
145 itself, be interpreted as consent. For that reason, relying solely on non-
146 verbal communication can lead to misunderstanding.

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148 2. Consent to any one form of sexual activity cannot automatically imply
149 consent to any other forms of sexual activity.

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151 3. Previous relationships, including past sexual relationships or prior
152 consent cannot imply consent to future sexual acts.

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Commented [RKJ6]: Model language from ATIXA

- 154 4. Consent must be present throughout sexual activity and may be
155 withdrawn at any time. If there is confusion as to whether there is
156 consent or whether prior consent has been withdrawn, it is essential that
157 the participants stop the activity until the confusion is resolved.
158
- 159 5. In order to give effective consent, one must be of legal age, as defined
160 by applicable Maryland law.
161

162 Sexual activity that is forced or coerced is by definition non-consensual. Force is
163 the use of physical violence and/or imposing on someone physically to gain
164 sexual access. Force also includes threats, intimidation (implied threats) and
165 coercion that overcome resistance or produce consent. There is no requirement
166 that a party resist the sexual advance or request, but resistance is a clear
167 demonstration of non-consent. Coercion is unreasonable pressure for sexual
168 activity. Coercive behavior differs from seductive behavior based on the type of
169 pressure used to obtain consent. Frequency, intensity, isolation, and duration of
170 the behavior will be considered in making a determination of whether coercion
171 occurred. When a party makes clear that they do not want to engage in sex, that
172 they want to stop, or that they do not want to go past a certain point of sexual
173 interaction, continued pressure beyond that point can be coercive. Coercing
174 someone into sexual activity violates this Policy in the same way as physically
175 forcing someone into sex.
176

177 It is a violation of Policy 31001 to engage in sexual activity with someone whom
178 one should knows to be — or based on the circumstances should reasonably
179 have known to be — mentally or physically incapacitated. To be incapacitated
180 means that a person’s decision-making ability is impaired such that they lack
181 capacity to understand the “who, what, where, why, or how” of their sexual
182 interaction. Incapacitation may result from sleep or unconsciousness, temporary
183 or permanent mental or physical disability, involuntary physical restraint, or the
184 influence of drugs or alcohol.
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- 186 E. Corrective Action – action(s) recommended by the Hearing Officer in consultation
187 with appropriate administrator to be taken to sanction the Respondent and
188 provide appropriate remedies to the Complainant, if the Hearing Officer
189 concludes that there has been a violation of the College’s Sexual Misconduct
190 Policy.
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- 192 F. Dating violence – Violence committed by a person who is or has been in a social
193 relationship of a romantic or intimate nature with the victim. The existence of
194 such a relationship shall be determined based on the complainant’s statement
195 and with consideration of the length of the relationship, the type of relationship,
196 and the frequency of interaction between the persons involved in the relationship.
197 For the purposes of this definition, dating violence includes, but is not limited to,
198 sexual or physical abuse or the threat of such abuse. Dating violence does not
199 include acts covered under the definition of domestic violence.
200
- 201 G. Domestic violence – encompasses a broad range of behaviors, including Sexual
202 Assault, physical abuse and other forms of violence committed by a current or
203 former spouse or intimate partner of the Complainant, by a person with whom the
204 Complainant shares a child in common, by a person who is cohabitating with or
205 has cohabitated with the Complainant as a spouse or intimate partner, by a
206 person similarly situated to a spouse of the Complainant, or by any other person

Commented [RKJ7]: For clarity.

- 207 against an adult or youth Complainant protected from those acts by domestic or
208 family violence laws of Maryland.
- 209
- 210 H. Formal Complaint – a document filed by a complainant or
211 signed by the Title IX Coordinator alleging sexual harassment against a
212 respondent and requesting that the College investigate the allegation of
213 sexual harassment. A formal complaint may be filed with the Title IX Coordinator
214 in person, by mail, or by electronic mail, by using the contact information listed
215 for the Title IX Coordinator, or through the Sexual Misconduct Report form-formal
216 Title IX Complaint form.
- 217
- 218 I. Formal Resolution – one of several available routes for resolution of allegations
219 of sexual misconduct under this Procedure. Formal Resolution involves a
220 prompt, fair, and impartial fact-finding Investigation and live hearing.
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- 222 J. Incapacitated - an individual who is Incapacitated is unable to give Consent to
223 sexual contact. States of Incapacitation include sleep, unconsciousness,
224 intermittent consciousness, or any other state where the individual is unaware
225 that sexual contact is occurring. Incapacitation may also exist because of a
226 mental or developmental disability that impairs the ability to Consent to sexual
227 contact. Alcohol or drug use is one of the prime causes of Incapacitation.
228 However, a person is not incapacitated merely because they have been drinking
229 or using drugs. Where alcohol or other substances are involved, incapacitation is
230 determined by how the substance impacts a person's decision-making capacity,
231 awareness of consequences, and ability to make informed judgments. Because
232 the impact of alcohol or other drugs varies from person to person, evaluating
233 whether an individual is Incapacitated, and therefore unable to give Consent,
234 requires an assessment of whether the consumption of alcohol or other drugs
235 has rendered the individual physically helpless or substantially incapable of:
236
- 237 1. making decisions about the potential consequences of sexual contact;
 - 238 2. appraising the nature of one's own conduct;
 - 239 3. communicating Consent to sexual contact; or
 - 240 4. communicating unwillingness to engage in sexual contact.
- 241
- 242 K. Informal Resolution – a remedies-based, non-judicial style approach designed to
243 address allegations of sexual misconduct without taking disciplinary action
244 against a Respondent. Informal Resolution may not be appropriate for resolving
245 allegations of some types of sexual misconduct.
- 246
- 247 L. Initial Title IX Assessment/Intake – an assessment, conducted by the Title IX
248 Coordinator upon receipt of a report of an alleged violation of Policy 31001-
249 Sexual Misconduct, to provide an integrated and coordinated response to a
250 report of sexual misconduct.
- 251
- 252 M. Supportive Measures – individualized services reasonably available that are
253 nonpunitive, non-disciplinary, and not unreasonably burdensome to the other
254 party while designed to ensure equal educational access, protect safety, or deter
255 sexual harassment.
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- 257 N. Investigation – a prompt and thorough process for providing a fair and reliable
258 means of gathering relevant and factual information in the course of Formal
259 Resolution.

Commented [RKJ8]: Form is no longer live as a complainant must meet with Title IX coordinator prior to deciding to file a formal complaint. This aligns with guidance from ATIXA.

Commented [RKJ9]: Term changed to reflect process.

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- O. Investigator – the College official, or designee, responsible for conducting investigations of reports of sexual misconduct. The College may engage internal or external individuals who are trained to conduct the resolution processes described in these procedures.
- P. Hearing Officer - is a "presiding officer" in a full hearing for the purpose of conducting a full adjudicative proceeding under this policy.
- Q. Mandated Reporter - College employees who have the responsibility to notify the Title IX Coordinator when they are made aware of a student or employee experiencing sexual misconduct. Mandated Reporters do not have the Authority to implement corrective action or resolve a report of sexual misconduct.

For student Complaints, Mandated Reporters are:
 - Instructional Faculty and Faculty Department Chairs,
 - Coaches,
 - Athletic trainers,
 - Administrators (including but not limited to the Title IX Coordinator),
 - Campus Public Safety Officers, and
 For employee Complaints, Mandated Reporters are:
 - Administrators (including but not limited to the Title IX Coordinator and the Director of Employee Relations, Diversity, and Inclusion),
 - Supervisors, and
 - Campus Public Safety Officers
- R. Respondent – refers to an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
- S. Retaliation – ~~Intimidation, threats, coercion, or discrimination for the purpose of interfering with any right or privilege secured by title IX, any adverse action taken or threatened against an individual because that individual has made a report, filed a complaint, testified, assisted, or participated in any manner in an investigation or proceeding related to Sexual Misconduct. Such adverse action can adversely affect or threaten to affect the employment rights or other interests of an individual and can take either work or social form.~~
- T. Sexual Assault – An offense that meets the definition of rape, fondling, incest or statutory rape as used in the FBI's Uniform Crime Reporting system. A sex offense is any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.
 - Rape: The 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 victim.
 - Fondling: The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of ~~his/her/their~~ age or because of ~~his/her/their~~ temporary or permanent mental incapacity.
 - Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

Commented [REJ10]: Definition from 34 C.F.R. § 106.71(a).

Commented [RKJ11]: Changed to clarify; limited.

Commented [RKJ12R11]: Reverted back to "private body parts" per GC recommendation. For alignment with the Uniform Crime Reporting program.

- 312 - Statutory Rape: Sexual intercourse with a person who is under the statutory
313 age of consent.
314
- 315 U. Sexual Harassment – Conduct on the basis of sex that satisfies one or more of
316 the following:
317
- 318 1. An employee conditioning the provision of an aid,
319 benefit, or service of the College on an individual's participation in
320 unwelcome sexual conduct; or
321
- 322 2. unwelcome conduct that a reasonable person would find so severe,
323 pervasive, and objectively offensive that it denies a person equal
324 educational access; or
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- 326 3. any instance of sexual assault, dating violence, domestic violence, or
327 stalking.
328
- 329 V. Sexual Misconduct – is an umbrella term that encompasses Dating Violence,
330 Domestic Violence, Sexual Violence, Sexual Harassment, Sexual Assault, and
331 Stalking. Sexual Misconduct can occur between strangers or acquaintances,
332 including people involved in an intimate or sexual relationship. Sexual
333 Misconduct can be committed by any person, regardless of gender identity, and
334 can occur between people of the same or different sex, sexual orientation, or
335 gender expression.
336
- 337 W. Support Person - an individual age eighteen (18) or older who is not a
338 Complainant or Respondent to the alleged misconduct and who serves as a
339 silent and non-participating presence during any part of the processes under this
340 Procedure. The role of the Support Person is solely to observe and provide moral
341 support to a Complainant or Respondent in a way that does not disrupt or delay
342 the process.
343
- 344 X. Stalking – Engaging in a course of conduct directed at a specific person that
345 would cause a reasonable person to fear for his or her safety or the safety of
346 others or suffer substantial emotional distress. Course of conduct means two or
347 more acts, including, but not limited to, acts in which the stalker directly,
348 indirectly, or through third parties, by any action, method, device, or means,
349 follows, monitors, observes, surveils, threatens, or communicates to or about, a
350 person, or interferes with a person's property. Substantial emotional distress
351 means significant mental suffering or anguish that may, but does not necessarily
352 require medical or other professional treatment or counseling. "Reasonable
353 person" means a reasonable person under similar circumstances and with similar
354 identities to the victim.
355
- 356 Y. Third-Party Witness - an individual who may have relevant direct or
357 circumstantial knowledge or information about the alleged misconduct.
358
- 359 Z. Title IX Coordinator – the College administrator who oversees the College's
360 centralized review, investigation, and resolution of reports of sexual misconduct.
361 The Coordinator also oversees the College's overall compliance with Title
362 IX. The Title IX Coordinator is responsible for:
363

- 364 1. providing oversight of the investigation and resolution of all reports of
- 365 sexual misconduct;
- 366
- 367 2. recommending updates to the College's policies and procedures related
- 368 to sexual misconduct;
- 369
- 370 3. designing and/or providing or overseeing training on sexual misconduct
- 371 and the implementation of the College's 31001- Sexual Misconduct
- 372 Policy and Procedure;
- 373
- 374 4. advising any individual, including a Complainant, a Respondent, or a
- 375 third party, about the courses of action available at the College, both
- 376 informally and formally, and in the community;
- 377
- 378 5. implementation of supportive measures
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- 380 6. providing assistance to any College employee or student regarding how
- 381 to respond appropriately to a report of sexual misconduct;
- 382
- 383 7. monitoring full compliance with all procedural requirements and time
- 384 frames outlined in this Procedure; and,
- 385
- 386 8. training, prevention, and education efforts and periodic reviews of climate
- 387 and culture.
- 388

The College's current Title IX Coordinator is:

391 [Christopher Moy, Title IX Coordinator](#)[Kristen Roe](#)
 392 [900 Hungerford Drive, Room 315-G9221 Corporate Blvd.](#)
 393 [Rockville, MD 20850](#)
 394 [240-567-54124279](#)
 395 kristen.roe@montgomerycollege.edu[ge.edu](mailto:christopher.moy@montgomerycolle

 396 <a href=)

IV. Confidential Resources

398 Generally, it is not confidential when a person reports Sexual Misconduct. If a person
 399 desires to keep an incident of Sexual Misconduct confidential, they should speak with
 400 individuals who have professional or legal obligations to keep communications
 401 confidential. When seeking advice and support, persons should always consider whether
 402 they want to discuss their concerns with a confidential resource. Unless there is an
 403 imminent threat to health or safety or other basis for disclosure, such as child abuse,
 404 confidentiality applies when persons seek services from the following resources.
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 406

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 408 A. Internal Confidential Reporting

- 409 1. Certain College employees have been deemed Confidential Resources
- 410 for purposes of this Procedure:
- 411
- 412 a. For Students (contact a counselor directly):
- 413
- 414 [Rockville Counseling Department](#)
- 415 [240-567-5063 or 240-567-4104](#)
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Germantown Counseling Department
240-567-7734

Takoma Park/Silver Spring Counseling Department
240-567-1480

b. For Employees:

Office of the Ombuds
240-687-6199
ombuds@montgomerycollege.edu

- 2. Confidential Resources may need to make reports or a disclosure as required by the Jeanne Clery Act. Such reporting for purposes of the Clery Act does not require a Confidential Resource to reveal an individual's identity.
- 3. Discussing an alleged incident of sexual misconduct with a Confidential Resource will not lead to an investigation or resolution of the incident. Confidential Resources do not have the authority to establish supportive measures or take corrective action.

B. External Confidential Reporting

Individuals who are seeking information and support may also contact the following organizations. Please note, however, that disclosures or reports made to any of these organizations may not be required to be kept confidential as a matter of law.

1. Resource for Employees

Faculty Staff Assistance Program
1-800-935-9551 (24-hour hotline)
1-800-855-288 TTY
<http://www.fadv.com/eapsap/>

2. Community Resources for Students and Employees

Montgomery County Victim Assistance and Sexual Assault Program (VASAP)
1301 Piccard Drive, Suite 4100
Rockville, MD 20850
240-777-4357 (24-hour crisis hotline)
240-777-1347 TTY

VASAP Campus Liaisons:

Silver Spring/Takoma Park Campus/Westfield South Training Center
240-777-1355

Germantown Campus/Gaithersburg Training Center

Commented [FA13]: Should we wait until we fill this position?

Commented [RKJ14R13]: Moving forward with filling the position; will retain.

Commented [FA15]: Same question as earlier about the United States?

Commented [RKJ16R15]: Same answer as above.

Commented [RKJ17]: Campus liaisons have been inconsistent and change frequently. We can keep more accurate and updated contact information in our other materials, does not need to be specified in procedure.

240-777-1355

Rockville Campus
240-777-1355

V. Reporting Sexual Misconduct

The College encourages all individuals to make a report to the College and to local law enforcement whenever a crime may have been committed. The College will assist Complainant who wish to report sexual misconduct to law enforcement authorities. Reports to law enforcement and reports to the College can be pursued simultaneously.

A. Emergency Situations

1. If there is an immediate threat, if possible and necessary go to a safe location, and if injured, seek immediate medical attention.
2. Call 911 first, then call 240-567-3333 or go to the nearest Office of Public Safety:
 - a. Germantown Campus Public Safety
282 Science and Applied Sciences (SA) Building
 - b. Rockville Campus Public Safety
101 Counseling and Advising (CB) Building
 - c. Takoma Park/Silver Spring Public Safety
117 Charlene Nunley Student Services (ST) Building

B. Internal Reporting

1. A report of sexual misconduct may be made at any time. Members of the College community are encouraged to make reports promptly in order to maximize the College's ability to obtain evidence, identify potential witnesses, and conduct a thorough, prompt, fair, and equitable investigation.
 - a. Students may report alleged sexual misconduct:
 - i. to the Title IX Coordinator in person, by mail, or electronic mail;
 - ii. to any other Mandated Reporter, as defined in Section III; or
 - iii. through the online Formal [Title IX Complaint Form Sexual Misconduct Report Form](#)
 - b. Employees and other members of the College community who are not students may report sexual misconduct:
 - i. to the Title IX Coordinator in person, by mail, or electronic mail;
 - ii. to the Director of Employee and Relations;
 - iii. to any other Mandated Reporter, as defined in Section

Commented [RKJ18]: Updated name to match name of form

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iv. III; or
through the online [Formal Title IX Complaint Form](#)
[Sexual Misconduct Report Form](#).

e. At the time of filing a formal complaint, a Complainant must be
d. participating in or attempting to participate in the education program or activity of the school with which the formal complaint is filed.

c.

When the College has knowledge of sexual harassment, but [the Complainant has chosen to not file a formal complaint](#)

~~g.d. formal complaint has been filed because the Complainant is reluctant~~, the Title IX Coordinator may sign a formal complaint initiating the formal resolution process. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or a party during the resolution process.

2. Upon receiving a report, the College shall immediately inform the Complainant of available options about the involvement of law enforcement, including the Complainant's option to:

- a. notify law enforcement authorities, including the campus Public Safety and local police;
- b. decline to notify such authorities; and
- c. be promptly assisted by the College, at the victim's request, in notifying local law enforcement authorities and in obtaining appropriate medical attention, including arranging transportation to the nearest hospital equipped with the Maryland State Police sexual assault evidence collection kit. In Montgomery County, the only facility equipped with the Maryland State Police sexual assault evidence collection kit (SAFE) and specially trained forensic nurses is:

Shady Grove Adventist Hospital
Forensic Medical Unit
9901 Medical Center Drive
Rockville, MD 20850

This is the best option to ensure preservation of evidence that may assist in proving that a criminal offense occurred or may be helpful in obtaining a protection order.

3. The College will provide support that can assist each Complainant in making decisions about whether or not to request any particular course of action. To the extent possible and reasonable, the College will respect a Complainant's autonomy in deciding how to proceed. In this process, the College will balance the Complainant's interest with its obligation to provide a safe and non-discriminatory environment for all members of

Commented [RKJ19]: For clarity

576 the College community.
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 578 4. Safe Harbor
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 580 To encourage reporting, an individual who reports sexual misconduct,
 581 either as a Complainant or a Third-Party Witness, will not be subject to
 582 disciplinary action by the College for a violation of the College’s alcohol
 583 or drug use policies if:
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 585 a. The violation occurred during or near the time of the alleged
 586 sexual misconduct violation;
 587 b. The individual is determined to have made the report or is
 588 participating in an investigation as a witness in good faith; and
 589 c. The College determines that the violation was not an act that
 590 was reasonably likely to place the health or safety of another
 591 individual at risk.
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 593 The College may, however, initiate an educational or employment
 594 discussion or pursue other remedies regarding alcohol or other drugs.

595
 596 5. Obligations of “Mandatory Reporters”
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 598 A Mandatory Reporter must promptly notify the Title IX Coordinator of
 599 any report of Sexual Misconduct brought to their attention, including
 600 Public Safety. The Title IX Coordinator works collaboratively with the
 601 reporting entity, making every effort to operate with discretion and
 602 maintain the privacy of the individuals involved. The Mandatory Reporter
 603 is not authorized to take corrective action.
 604

C. External Reporting

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 606
 607 In addition, members of the College community may also report ~~certain instances~~
 608 of sexual misconduct to applicable federal, state, or local government agencies
 609 responsible for enforcing laws prohibiting sexual harassment against students or
 610 employees. For more information please contact:

611
 612 U.S. Department of Education
 613 Office for Civil Rights
 614 800-421-3481
 615 OCR@ed.gov
 616

617 Montgomery County Office of Human Rights
 618 Compliance Section
 619 240-777-8450
 620 Human-Rights.Administration@montgomerycountymd.gov Human-rights
 621

D. Retaliation

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 624 ~~Per College Policy 39003, Policy 31004 The College prohibits retaliation~~
 625 ~~(including any attempt to intimidate, threaten, coerce, or otherwise discriminate~~
 626 ~~against any individual) by the College, or by anyone in the College community,~~
 627 against an individual because the individual reports sexual misconduct or
 628 participates in the College’s processes related to an allegation of sexual

Commented [FA20]: ?

Commented [GE21]: Is this intended to be an email address?

Commented [RKJ22R21]: Good catch. The email address is Human-Rights.Administration@montgomerycountymd.gov

Commented [REJ23]: Redundant of definition, found above in § III.S.

629 misconduct as described in this Procedure. When the College is aware of
630 possible retaliation, it will take immediate steps to investigate. Students or
631 employees who commit retaliation in violation of Policy 31001 are subject to
632 appropriate disciplinary action. A Complainant or other participant in any
633 proceedings described in this Procedure who believes they have experienced
634 retaliation in violation of Policy 31001 should immediately report such conduct to
635 the Title IX Coordinator.

636 VI. Resolution Process

637 A. Initial Title IX Assessment

- 638
- 639 1. The College will meet with the Complainant to conduct an Initial Title IX
640 Assessment when made aware of an allegation. For allegations involving
641 students, the Title IX Assessment will be conducted by the Title IX
642 Coordinator. For allegations involving employees, the Title IX
643 Assessment will be conducted by the Director of Employee and Labor
644 Relations. The Initial Title IX Assessment will:
- 645 i. Assess any immediate threats to the safety of the Complainant
646 and the College community;
 - 647 ii. Inform the Complainant of their right to seek medical treatment
648 and report to law enforcement;
 - 649 iii. Provide supportive measures to ensure equal educational
650 access;
 - 651 iv. Determine whether the allegation could be a possible violation of
652 the Sexual Misconduct policy
 - 653 v. Provide the Complainant a copy of the Sexual Misconduct Policy
654 and information on any College and community resources;
 - 655 vi. Discuss adjudication options and procedures for resolution;
 - 656 vii. Inquire about the Complainant's expressed preference regarding
657 confidentiality and resolution, including any request that no
658 further action be taken; and
 - 659 viii. Determine next steps, including possibility of informal resolution,
660 initiation of a formal investigation, no cause, referral to
661 appropriate disciplinary process, or referral for timely warning
662 under the Clery Act.

663 2. Dismissal (Mandatory and Discretionary)

664 The College must dismiss a Formal Complaint or any allegations therein
665 if, at any time during the investigation or hearing, it is determined that:

- 666 a. The conduct alleged in the Formal Complaint would not
667 constitute Title IX Sexual Harassment as defined above, even if
668 proved

- 682 b. The conduct did not occur in an educational program or activity
- 683 controlled by the College (including buildings or property
- 684 controlled by recognized student organizations), and/or the
- 685 College does not have control of the Respondent
- 686 c. The conduct did not occur against a person in the United States
- 687 d. At the time of filing a Formal Complaint, a Complainant is not
- 688 participating in or attempting to participate in the College's
- 689 education program or activity, and based on the available
- 690 information, the Title IX Coordinator has determined that they do
- 691 not need to sign a Formal Complaint on behalf of the College

692 The College may dismiss a Formal Complaint or any allegations therein

693 if, at any time during the investigation or hearing:

- 696 a. A Complainant notifies the Title IX Coordinator in writing that the
- 697 Complainant would like to withdraw the Formal Complaint or any
- 698 allegations therein
- 699 b. The Respondent is no longer enrolled in or employed by the
- 700 College
- 701 c. Specific circumstances prevent the College from gathering
- 702 evidence sufficient to reach a determination as to the Formal
- 703 Complaint or allegations therein

705 A Complainant who decides to withdraw a complaint may later request to

706 reinstate it or refile it.

708 Upon any dismissal, the College will promptly send written notice of the

709 dismissal and the rationale for doing so simultaneously to the parties.

711 This dismissal decision is appealable by any party under the procedures

712 for appeal. ~~The decision not to dismiss is also appealable by any party~~

713 claiming that a dismissal is required or appropriate.

716 ~~If the allegations in a formal complaint do not meet the~~

717 ~~definition of sexual harassment, or did not occur in the College's~~

718 ~~education program or activity against a person in the United States,~~

719 ~~the College may dismiss such allegations for purposes of this policy.~~

720 ~~The College may still address the allegations in any manner it deems~~

721 ~~appropriate under other applicable policies. For allegations that are~~

722 ~~dismissed, Complainant(s)'s both Parties will be sent formal notice of~~

723 ~~the decision by the Title IX Coordinator and afforded an appeal of the~~

724 ~~decision, through the appropriate designated Senior Vice President.~~

Commented [RKJ24]: Corrected to reflect regulations.

725 2.3. Allegations Made by a Third-Party Witness

- 727 a. Any person may report sexual misconduct whether or not the
- 728 person reporting is the person alleged to be the victim of conduct
- 729 that could constitute sexual misconduct, in person, by mail, by
- 730 telephone, or by e-mail, using the contact information listed for
- 731 the Title IX Coordinator, or by any other means that results in the
- 732 IX Coordinator receiving the person's verbal or written report.
- 733 Such a report may be made at any time, including during non-
- 734

- 735 business hours, by using the telephone number or e-mail
736 address, or by mail to the office address, listed for the Title IX
737 Coordinator.
738
739 b. If a report has been made by a Third-Party Witness or other
740 individual with knowledge of sexual misconduct but no report has
741 been made by the individual against whom the violation is
742 alleged to have been committed, the Title IX Coordinator will
743 contact the individual against whom the violation is alleged to
744 have been committed.
745
746 c. The Title IX Coordinator will provide the individual an opportunity
747 to make a formal complaint, review supportive measures, and to
748 become a Complainant for purposes of this Procedure.
749
750 d. The individual is not obligated to make such a report or to
751 participate in the Initial Title IX Assessment or any subsequent
752 processes.
753
754 e. In addition, the individual may request that the College not
755 investigate or take any action against the Respondent.
756

757 B. Supportive Measures

758 As part of the Initial Title IX Assessment, the College will make an immediate
759 assessment of whether supportive measures are appropriate based on the
760 particular circumstances. The College will treat complainants and respondents
761 equitably, meaning that for a complainant, the College will offer supportive
762 measures, and for a respondent, the College will follow the adjudication process
763 before imposing disciplinary sanctions. These steps ensure the restoration or
764 preservation of equal educational access of the parties, protect safety, and deter
765 sexual harassment without unreasonably burdening the other party. Supportive
766 measures are available to both parties and to the Complainant, regardless if a
767 formal complaint is filed. When deemed in the best interests to protect the parties
768 and the College community, the following interim remedies can be implemented
769 with proper notice to both parties where appropriate:
770

- 771
772 a. Providing information on available medical services;
773
774 b. Access to counseling services and assistance in setting up initial
775 counseling appointment, both on- and off-campus;
776
777 c. Imposition of campus "No Contact Letter" (i.e., an official College
778 directive that serves as a notice to an individual that they must
779 not have verbal, electronic, written, or third-party
780 communications with another individual);
781
782 d. Change in work schedule or job assignment or reassignment to
783 other work group/team, or an alternative supervisor/management
784 relationship;
785
786 e. Limit an individual or organization's access to certain College
787 facilities or activities pending resolution of the matter;

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- f. Voluntary leave of absence;
- ~~g-f. Emergency suspension or College-imposed leave, pursuant to the appropriate College Policy and/or Procedure (Student Code of Conduct – 42001, Disciplinary Action and Suspension – 34002);~~
- h-g. Providing an escort to ensure safe movement between classes and activities;
- i-h. Rescheduling of assignment(s) and/or examination(s) (in consultation with appropriate faculty);
- j-i. Providing alternative course completion options (with the agreement of the appropriate faculty);
- k-j. Change in class schedule, including the ability to take an “incomplete,” drop a course without penalty, or transfer sections (with the agreement of the appropriate faculty);
- l-k. Providing academic support services, such as tutoring; and
- m-l. Any other remedy that can be tailored to protect the parties and achieve the goals of this policy; and.
- m. Where a respondent poses an immediate threat to the physical health or safety of the complainant or the campus community, emergency interim withdrawal or College-imposed leave:
 - i. For students, emergency interim withdrawal pursuant to Campus Behavioral Intervention Teams - 42002; or
 - ii. For employees, College-imposed leave pursuant to Disciplinary Action and Suspension - 34002.

The College will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns.

6. All individuals are encouraged to report to the Title IX Coordinator concerns about failure of another individual to abide by any restrictions imposed by a supportive measure. The College will take immediate and responsive action to enforce measure.

C. Grievance Process

The College resolves sexual misconduct complaints in one of two ways: informal resolution and formal resolution.

Commented [REJ25]: Moved from subsection “h” above. Clarifies two distinct processes: one for employees, one for students.

Removes reference to 42001 because 42001’s process does not include procedural steps of individual assessment, opportunity to appeal, etc. that are required per the regulations. 34 C.F.R. § 106.44(c). Instead, 42002 is referenced because it better meets the criteria of the regulations.

- 840 1. Informal Resolution – includes a variety of informal options for resolving
- 841 reports.
- 842
- 843 2. Investigation and Formal Resolution – includes an investigation, review,
- 844 live hearing, outcome determination, and sanctions, if applicable.
- 845
- 846 D. Informal Resolution
- 847
- 848 The informal resolution process may be used at any point prior to reaching a
- 849 determination of responsibility as long as a formal complaint has been filed and
- 850 an employee is not the respondent. The College may use mediation or other
- 851 informal mechanisms for resolving complaints related to a complaint alleging
- 852 violation of this policy if:
- 853
- 854 1. All parties provide voluntary, written consent to use the informal process;
- 855 2. The College participates in the informal resolution by providing trained
- 856 staff;
- 857 3. The alleged misconduct does not involve sexual assault or sexual
- 858 coercion; and
- 859 4. All parties are provided with a written notice that includes:
- 860 a. The allegations.
- 861 b. The requirements of the informal resolution process including the
- 862 circumstances under which it precludes the parties from
- 863 resuming a formal complaint arising from the same allegations.
- 864 c. At any time prior to agreeing to a resolution, the right of any party
- 865 to withdraw from the informal resolution process and resume the
- 866 grievance process with respect to the formal complaint.
- 867 d. Any consequences resulting from participating in the informal
- 868 resolution process, including the records that will be maintained
- 869 or could be shared.
- 870 e. For the purposes of this procedure, a student employee is not
- 871 considered an employee for purposes of informal resolution.
- 872
- 873 C. Investigation of a Formal Complaint
- 874
- 875 1. An investigation/formal resolution begins with the filing of a formal
- 876 complaint ~~signed by~~ the Complainant or Title IX Coordinator.
- 877
- 878 2. The College shall initiate a prompt, thorough, and impartial Investigation
- 879 to gather relevant information. Any subsequent disciplinary proceedings
- 880 and resolutions shall be prompt and equitable and provide an opportunity
- 881 for the Complainant and Respondent to be heard.
- 882
- 883 3. Investigations involve interviews with all relevant parties and witnesses;
- 884 obtaining available, relevant evidence; and identifying sources of expert
- 885 information, as necessary. All parties have a full and fair opportunity,
- 886 through the investigation process, to suggest witnesses and questions,
- 887 to provide evidence, and to fully review and respond to all evidence, on
- 888 the record.
- 889
- 890 4. A Notice of Investigation will be issued to both parties within ten (10)
- 891 working-business days upon determination by the Title IX Coordinator

Commented [RKJ26]: To reflect practice.

- 892 that the alleged offense is within scope of the Policy and will include the
893 following:
- 894
 - 895 a. Summary of the allegation, including time, date, and location of
896 the alleged violation;
 - 897 b. Potential violation(s) of Policy 31001 – Sexual Misconduct;
 - 898 c. List of possible sanctions that may be imposed upon a finding
899 that a violation has occurred;
 - 900 d. The identity of the Investigator (and any applicable assistant);
 - 901 e. Available College and community resources and services;
 - 902 f. Invitation for both parties to submit a written statement and
903 identify any third-party witnesses with information relevant to the
904 complaint;
 - 905 g. The rights and responsibilities of each party
 - 906 1) statement that the respondent is presumed not
907 responsible for the alleged conduct until a determination
908 regarding responsibility is made at the conclusion of the
909 formal resolution process;
 - 910 2) a statement that the parties may request to see and
911 review evidence collected in an investigation.
 - 912 3) The right to a Support Person and an Attorney or Non-
913 Attorney Advisor, and the roles of such persons;
 - 914 h. Availability and possibility of criminal and civil court options;
 - 915 i. An outline of the process, including the contact information for
916 the investigator and any required meetings that may be required;
917 and
 - 918 j. The College’s prohibition against retaliation.
- 919
- 920 5. The Investigation will be conducted by an investigator (internal or
921 external) who is trained on the definition of sexual harassment under
922 Title IX regulations, the scope of the recipient’s education program or
923 activity, how to conduct an investigation and grievance process including
924 hearings, appeals, and informal resolution processes, as applicable, and
925 how to serve impartially, including by avoiding prejudgment of the facts
926 at issue, conflicts of interest, bias, and issues of relevance to create an
927 investigative report that fairly summarizes relevant evidence, ~~on issues of
928 sexual misconduct, the definition of sexual harassment, and conducting
929 a neutral investigation free of bias or any conflict of interest.~~
- 930
- 931 6. An investigation typically contains the following elements:
- 932
 - 933 a. Commence a thorough, reliable, and impartial investigation
934 by identifying issues and developing a strategic investigation
935 plan, including a witness list, evidence list, intended
936 investigation timeframe, and order of interviews for all
937 witnesses and the respondent.
 - 938 b. Complete the investigation promptly and without
939 unreasonable deviation from the intended timeline.
 - 940 c. Conduct interviews with the Complainant and Respondent to
941 gather facts about the allegation.
 - 942 d. Allow each party the opportunity to suggest witnesses and
943 offer potential questions to consider asking to help uncover
944 relevant facts related to the allegation.

Commented [REJ27]: Language from 34 C.F.R. § 106.45(b)(1)(iii).

- 945 e. Interview all available relevant witnesses and conduct follow-
- 946 up interviews as necessary.
- 947 f. If and when additional material alterations to allegations
- 948 arise, communicate this promptly to the parties. This notice
- 949 will provide the parties with a summary of the additions or
- 950 alterations of the allegations, as well as any changes to the
- 951 policies implicated.
- 952 g. Provide the parties and witnesses an opportunity to review
- 953 and verify the investigator's summary notes from their
- 954 respective interviews and meetings.
- 955 h. Write a comprehensive investigation report fully summarizing
- 956 the investigation, all witness interviews, and addressing all
- 957 relevant evidence, copies of which are to be included in an
- 958 appendix to the report.
- 959 i. At the conclusion of the investigation, provide the parties and
- 960 their respective advisors (if so desired by the parties) a copy
- 961 of the draft investigation report.
- 962 j. Provide the parties with an equal opportunity to inspect and
- 963 review the evidence obtained as part of the investigation that
- 964 is directly related to the reported misconduct, including
- 965 evidence upon which the College does not intend to rely in
- 966 reaching a responsibility determination, so that each party
- 967 may meaningfully respond to the evidence.
- 968 k. Provide each party with a full and fair opportunity (no fewer
- 969 than 10 days) to respond to the draft investigation report in
- 970 writing. Extensions may be granted in rare and unusual
- 971 circumstances. Prior to the conclusion of the investigation,
- 972 provide the parties and their respective Advisors (if so
- 973 desired by the parties) a secured electronic or hard copy of
- 974 the draft investigation report as well as an opportunity to
- 975 inspect and review all of the evidence obtained as part of the
- 976 investigation that is directly related to the reported
- 977 misconduct, including evidence upon which the
- 978 Recipient College does not intend to rely in reaching a
- 979 determination, for a ten (10) business calendar-day review
- 980 and comment period so that each party may meaningfully
- 981 respond to the evidence. The parties may elect to waive the
- 982 full ten (10) days.
- 983 l. Incorporate relevant elements of the parties' written
- 984 responses into the final investigation report, make any
- 985 changes needed, and finalize the report. The final report is
- 986 then shared with all parties. Incorporate relevant elements of
- 987 the parties' written responses into the final investigation
- 988 report, include any additional relevant evidence, make any
- 989 necessary revisions, and finalize the report. The
- 990 Investigator(s) should document all rationales for any
- 991 changes made after the review and comment period.
- 992 incorporate any relevant feedback and share the final report
- 993 with all parties and their Advisors at least ten (10)
- 994 business calendar days prior to a hearing. The parties and
- 995 Advisors are also provided with a file of any directly related
- 996 evidence that was not included in the report.
- 997 m.

Commented [RKJ28]: Updated with ATIXA model language. ATIXA advised we clarify that there are two 10-day review periods so that we are in compliance.

~~to serve as their advisor or support person, as long as they are available. While it is not advisable to choose as an advisor, support person, someone who is also a witness in the process, should a party decide to do so, the potential for bias and conflict of interest of the witness can and will be explored by the Hearing Officer.~~

- 1.2. The advisor may be a friend, mentor, family member, attorney, [union representative](#) or any other individual a party chooses to advise and consult with them throughout the resolution process. The parties may choose advisors from inside or outside the Montgomery College community. The Title IX Coordinator will also offer to assign a trained Pool member to serve as an advisor for any party if the party so chooses. The parties may choose their advisor from the Pool, a non-trained advisor from outside the pool, or proceed without an advisor.
- 2.3. The parties may be accompanied by their advisor in all meetings and interviews at which the party is entitled to be present, including intake and interviews. Advisors should help their advisees prepare for each meeting and are expected to advise ethically, with integrity, and in good faith.
- 3.4. Montgomery College cannot guarantee equal advisory rights, meaning that if one party selects an advisor who is an attorney, but the other party does not, or cannot afford an attorney, the College is not obligated to provide an attorney. The College will, however, provide a party with an advisor selected by the Title IX Coordinator from the Pool if a hearing proceeding takes place and the party has not previously been accompanied by an advisor. A College-appointed advisor is a process advisor who is trained on the institutional process and how to conduct appropriate cross-examination during the hearing. The advisor provided by the College is not an advocate or attorney and is not able to provide the same kinds of advice that an advocate or attorney is trained to provide, but will act in the best interests of their advisee.
- 4.5. Parties may have assistance by a licensed attorney, an advocate supervised by an attorney, or a trained advocate throughout the disciplinary proceedings, including:
 - a. Attendance at hearings, meetings, and interviews,
 - b. Private consultations during hearings, meetings, and interviews, except during a questioning at a hearing; and
 - c. Assistance with the exercise of any rights during the disciplinary proceedings. Notwithstanding the choice that the parties make in regards to the above, the presence of no more than two people, including a personal supporter, an attorney, or an advocate, at any hearing, meeting, or interview during the disciplinary proceedings.
- 6. Student Right to Paid Counsel for College Disciplinary Proceedings involving Sexual Assault.
 - a. Maryland Law (Education Article of the Annotated Code of Maryland, §11-601) requires the Maryland Higher Education

- 1103 Commission (MHEC) to pay reasonable costs and attorney's
1104 fees, subject to state funding and eligibility requirements, for:
- 1105
 - 1106 i. A current or former student who makes a complaint on
1107 which a formal Title IX investigation is initiated and who
1108 was enrolled as a student at the time of the incident that
1109 is the basis of the complaint, unless the student
1110 knowingly and voluntarily chooses not to have counsel;
1111 and
 - 1112 ii. A current or former student who responds to a complaint
1113 on which a formal Title IX investigation is initiated and
1114 who was enrolled as a student at the time of the incident
1115 that is the basis of the complaint, unless the student
1116 knowingly and voluntarily chooses not to have counsel.
1117
 - 1118 b. In consultation with State and local bar associations and legal
1119 services providers with expertise about sexual misconduct,
1120 MHEC will develop a list of attorneys and legal services
1121 programs willing to represent students on a pro bono (no cost to
1122 the student) basis or at fees equivalent to those paid to attorneys
1123 under civil legal services programs administered by the Maryland
1124 Legal Services Corporation.
1125
 - 1126 c. A student may select an attorney from the list developed by
1127 MHEC to assist them throughout any disciplinary proceedings.
1128
 - 1129 d. If a student selects and retains an attorney who is not on the list
1130 developed by MHEC, MHEC will pay fees to the attorney
1131 selected by the student that are equivalent to those paid to
1132 attorneys under civil legal services programs administered by the
1133 Maryland Legal Services Corporation.
1134
 - 1135 e. MHEC is not required to pay a student's attorney fees for
1136 representation in a criminal or civil matter.
1137
 - 1138 f. The College may not discourage a student from retaining an
1139 attorney.
1140
 - 1141 g. The student right to counsel will not prohibit the College from
1142 imposing interim safety measures.
1143
 - 1144 7. All advisors are subject to the same College rules, whether they are
1145 attorneys or not. Advisors may not address campus officials in a meeting
1146 or interview unless invited to. The advisor may not make a presentation
1147 or represent their advisee during any meeting or proceeding and may not
1148 speak on behalf of the advisee to the investigators or other decision-
1149 makers except during a hearing proceeding, as described below.
1150
 - 1151 8. The parties are expected to ask and respond to questions on their own
1152 behalf throughout the investigation. While the advisor generally may not
1153 speak on behalf of their advisee, the advisor may consult with their
1154 advisee, either privately as needed, or quietly by passing notes during
1155 any resolution process meeting or interview, as long as they do not

- 1156 disrupt the process. For longer or more involved discussions, the parties
1157 and their advisors should ask for breaks to step out of meetings to allow
1158 for private consultation.
1159
- 1160 9. Advisors may be given an opportunity to meet with the administrative
1161 officials conducting interviews/meetings in advance of these interviews or
1162 meetings. This pre-meeting allows advisors to clarify any questions they
1163 may have, and allows the College an opportunity to clarify the role the
1164 advisor is expected to take.
1165
- 1166 10. Advisors are expected to refrain from interference with the College's
1167 investigation and resolution. Any advisor who interferes with or obstructs
1168 the investigation and resolution process, or otherwise disregards the
1169 parameters set forth in this procedure, will be warned once and only
1170 once. If the advisor continues to disrupt or otherwise fails to respect the
1171 limits of the advisor role, the advisor will be asked to leave the meeting.
1172 When an advisor is removed from a meeting, that meeting will typically
1173 continue without the advisor present. Subsequently, the Title IX
1174 Coordinator will determine whether the advisor may be reinstated or
1175 replaced by a different advisor.
1176
- 1177 11. The College expects that the parties may wish to have the College share
1178 documentation and evidentiary information related to the allegations with
1179 their advisors. Parties may share this information directly with their
1180 advisor, or other individuals if they wish. Doing so may help the parties
1181 participate more meaningfully in the resolution process. The College ~~also~~
1182 provides a consent form that authorizes the College to share such
1183 information directly with the advisor. The parties must either complete
1184 this form or provide similar documentation consenting to a release of
1185 information to the advisor before the College is able to share records
1186 with an advisor. [While the College seeks consent for information sharing
with advisors, the College is required to share the final investigation
report and directly related evidence with the advisor in order to prepare
for the hearing.](#) If a party requests that all communication be made
1189 through their attorney advisor, the Institution will comply with that
1190 request.
1191
- 1192 12. Advisors are expected to maintain the privacy of the records shared with
1193 them. These records may not be shared with third parties, disclosed
1194 publicly, or used for purposes not explicitly authorized by the College.
1195 The College may seek to restrict the role of any advisor who does not
1196 respect the sensitive nature of the process or who fails to abide by the
1197 Institution's privacy expectations.
1198
- 1199 13. The College expects an advisor to adjust their schedule to allow them to
1200 attend College meetings when planned. The College does not typically
1201 change scheduled meetings to accommodate an advisor's inability to
1202 attend. The College will, however, make reasonable provisions to allow
1203 an advisor who cannot attend in person to attend a meeting by
1204 telephone, video conferencing, or other similar technologies as may be
1205 convenient and available.
1206
- 1207 14. A party may elect to change advisors during the process, and is not
1208

1209 obligated to use the same advisor throughout. The parties are expected
1210 to inform the investigators of the identity of their advisor at least one (1)
1211 day before the date of their first meeting with investigators (or as soon as
1212 possible if a more expeditious meeting is necessary or desired). The
1213 parties are expected to provide timely notice to investigators if they
1214 change advisors at any time.

1215
1216 15. For parties who are entitled to union representation, the College will
1217 allow the unionized employee to have their union representative (if
1218 requested by the party) as well as an advisor of their choice present for
1219 all resolution-related meetings and interviews. To uphold the principles of
1220 equity, when at least one of the parties' request union representation,
1221 they are entitled to a non-union representative as well. In such cases, the
1222 other party (regardless of union membership) will be permitted to have
1223 two advisors. Witnesses are not permitted to have union representation
1224 or advisors in resolution process interviews or meetings.
1225

1226 E. Role and Participation of Witnesses

1227
1228 Witnesses (as distinguished from the parties) who are faculty, students, or staff
1229 of the College are ~~encouraged~~ ~~expected to~~ cooperate with and participate in the
1230 College's investigation and resolution process.

1231
1232 While in-person interviews for both parties and all potential witnesses are ideal,
1233 circumstances (e.g. study abroad, summer break) may require individuals to be
1234 interviewed remotely using technology. Witnesses may also provide written
1235 statements in lieu of interviews, if deemed appropriate by the investigators, though not
1236 preferred.

1237
1238 F. Assurances to Persons Involved, Safeguarding of Privacy. All individuals,
1239 including the Complainant, the Respondent, and any Third-Party Witnesses, will
1240 be treated with appropriate sensitivity and respect. The Investigator will
1241 safeguard the privacy of the individuals involved in a manner consistent with law
1242 and College policy and the need to investigate the matter.

1243
1244 G. Consolidation of Investigations. At the discretion of the Title IX Coordinator,
1245 multiple reports may be consolidated against a Respondent(s) in one
1246 investigation, if the evidence related to each incident would be relevant and
1247 probative in reaching a determination on the other incident.

1248
1249 H. Referral for Hearing
1250 Provided that the contested allegations are not resolved through Informal
1251 Resolution, the Title IX Coordinator will refer the matter for a hearing at least ten
1252 (10) days after the conclusion of the investigation, barring unusual
1253 circumstances.

1254
1255 1. Notice of Hearing

1256
1257 At least 10-days prior to the hearing, or as far in advance as is
1258 reasonably possible if an accelerated hearing is scheduled with the
1259 consent of the parties, the Hearing Officer will send a letter of notice to
1260 the parties. Once mailed, emailed, and/or received in-person, notice will
1261 be presumptively delivered. The letter will contain:

Commented [RKJ30]: Reflects accurate expectation and limitation

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1313

- a. A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result.
- b. The time, date, and location of the hearing and a reminder of the importance of their attendance, superseding all other campus activities. If any party does not appear at the scheduled hearing, the hearing will be held in their absence. For compelling reasons, the Hearing Officer may reschedule the hearing. ~~(Failure of any individual to attend will result in exclusion of that person's testimony from consideration in the hearing)~~
- c. b. Notification that the parties may have the assistance of an advisor of their choosing at the hearing (See Section on "Advisors" above). If any party does not have an advisor, the Title IX Coordinator will appoint one from the Pool.
- d. c. The parties will be provided the names of the Hearing Officer at least ten (10) days in advance of the hearing. All objections to the Hearing Officer must be raised in writing and submitted to the Title IX Coordinator as soon as possible. The Hearing Officer will only be removed if the Title IX Coordinator concludes that the Hearing Officer's bias or conflict of interest precludes an impartial hearing of the allegation.

2. Pre-Hearing

The Hearing Officer, after consultation with the parties as necessary, will provide the names of witnesses who will be participating in the hearing, ~~all pertinent documentary evidence, and the investigation report~~ with the parties ~~at least ten (10) days~~ prior to the hearing. Any witness scheduled to participate in the hearing must have been interviewed first by investigators [or have proffered a written statement], unless all parties consent to the witness' participation in the hearing.

3. Alternative Hearing Options

If a party or parties prefer not to attend the hearing in person, the parties should request alternative arrangements from the Hearing Officer at least five (5) days prior to the hearing. The Hearing Officer may arrange to use technology to allow remote testimony without compromising the fairness of the hearing.

4. Evidentiary Considerations

- a. Except for the evidentiary prohibitions set forth below, any evidence that the Hearing Officer believes is relevant and credible may be considered, including an individual's prior misconduct history, as well as evidence indicating a pattern of misconduct. When prior misconduct is related to the current

Commented [RKJ31]: No longer applicable due to court ruling in *Victim Rights Law Center et al. v. Cardona*, No. 1:20-cv-11104, 2021 WL 3185743 (D. Mass. July 28, 2021).

Commented [RKJ32]: This documentation is shared earlier in the process.

- 1314 allegations, the prior misconduct may be considered at the
- 1315 findings stage of the process; unrelated prior misconduct (e.g.
- 1316 alcohol abuse) will only be considered during sanctioning. The
- 1317 Hearing Officer may exclude irrelevant or immaterial evidence
- 1318 and may choose to disregard evidence lacking in credibility or
- 1319 that is improperly prejudicial.
- 1320
- 1321 b. While previous conduct violations by the respondent are not
- 1322 generally admissible as information supporting the current
- 1323 allegation, the investigator(s) may, after a determination of
- 1324 responsibility decision is made that may result in sanctions,
- 1325 supply the Hearing Officer with information about previous
- 1326 misconduct, good faith allegations, and/or findings, when that
- 1327 information suggests a potential pattern and/or predatory
- 1328 conduct.
- 1329
- 1330 c. Previous disciplinary action of any kind involving the respondent
- 1331 may be considered in determining the appropriate sanction,
- 1332 because the Institution uses a progressive discipline system.
- 1333
- 1334 d. The Hearing Officer renders a determination based on the
- 1335 preponderance of the evidence, i.e., whether it is more likely
- 1336 than not that the respondent violated policy.

5. Evidentiary Prohibitions

The Hearing Officer shall not consider certain evidence, including:

- 1342 a. Questions and evidence about the Complainant's sexual
- 1343 predisposition or prior sexual behavior. Such questions and
- 1344 evidence are not relevant, unless such questions and evidence
- 1345 about the Complainant's prior sexual behavior are offered to
- 1346 prove that someone other than the respondent committed the
- 1347 conduct alleged by the complainant, or if the questions and
- 1348 evidence concern specific incidents of the complainant's prior
- 1349 sexual behavior with respect to the respondent and are offered
- 1350 to prove consent.
- 1351
- 1352 b. Questions or evidence that constitute, or seek disclosure of,
- 1353 information protected under a legally recognized privilege, unless
- 1354 the person holding such privilege has waived the privilege. The
- 1355 Complainant or Respondent's history of mental health
- 1356 counseling, treatment, or diagnosis, unless the Complainant or
- 1357 Respondent consents.

Commented [REJ33]: Language from 34 C.F.R. § 106.45.

6. Hearing Procedures

Hearings will usually be convened at least 10-days-~~10-14~~ days from the completion of the final investigative report and will be conducted in private. Participants will include the Hearing Officer, investigator(s) who conducted the investigation, the Complainant and Respondent organizational representatives when an organization is the respondent), advisors and support person to the parties (the parties may have up to

1367 two people present, one advisor and one support person), and any called
1368 witnesses.

1369 a. Investigator Presents the Report

- 1371 i. The Hearing Officer explains the procedures and
1372 introduces the participants.
- 1373 ii. The investigator(s) will then present the report of the
1374 investigation and will be subject to questioning by the
1375 Hearing Officer and parties. The investigator(s) will be
1376 present during the entire hearing process. Once the
1377 investigator(s) present their report and are questioned,
1378 the parties may provide relevant information in turn and
1379 the Hearing Officer will permit questioning of ~~and by~~ the
1380 parties and witnesses through the respective Advisors.
1381

1382 b. Participation in Hearing

1383 The Complainant and Respondent have the right to be present at
1384 the hearing. If, despite being notified of the date, time, and
1385 location of the hearing, any party is not in attendance, the
1386 hearing may proceed as described below. Neither party is
1387 required to participate in the hearing in order for the hearing to
1388 proceed. Investigators will be present, unless the Hearing Officer
1389 permits an absence under extenuating circumstances. ~~If a~~
1390 witness does not appear for the hearing, their testimony will be
1391 excluded.
1392
1393

Commented [RKJ34]: No longer applicable after *Victim Rights Law Center et al. v. Cardona*, No. 1:20-cv-11104, 2021 WL 3185743 (D. Mass. July 28, 2021).

1394 c. Questioning

- 1395 i. Questioning will be permitted of investigators, parties,
1396 and witnesses by the advisors to each party and the
1397 Hearing Officer, including cross examination contesting
1398 a party's or witness's credibility. Direct cross
1399 examination by the parties is prohibited; the party's
1400 advisor must conduct the cross-examination on behalf of
1401 that party.
- 1402 ii. The Hearing Officer has absolute discretion to determine
1403 which questions are relevant to the determination and
1404 may decline to permit certain questions.
- 1405 iii. The Hearing Officer may direct that certain live
1406 questions, once posed, are not appropriate and should
1407 not be answered. In such instances, the Hearing Officer
1408 will provide the questioning advisor with a rationale for
1409 their exclusion of the specific question(s). The Hearing
1410 Officer is responsible for ensuring that neither abusive
1411 nor inappropriate questioning occurs. The Hearing
1412 Officer will explain, on the record, the reason any
1413 question has been determined not appropriate to be
1414 answered.
- 1415 iv. The Hearing Officer may consult with the College's
1416 General Counsel, when needed, to help assess the
1417
1418

1471 Complainant to be conducted separately, if there is a
 1472 compelling reason to do so. In joint hearings, separate
 1473 determinations of responsibility will be made for each
 1474 Respondent.
 1475
 1476 v. Hearings (except for deliberations) are recorded for
 1477 purposes of review in the event of an appeal. The parties
 1478 may not record the proceedings and no other
 1479 unauthorized recordings are permitted. The Hearing
 1480 Officer, the parties, their advisors and appropriate
 1481 administrative officers of the College will be allowed to
 1482 listen to the recording in a controlled environment
 1483 determined by the Title IX Coordinator. No person will be
 1484 given or be allowed to make a copy of the recording
 1485 without permission of the Title IX Coordinator.
 1486
 1487 e. Deliberation and Determination of Outcome
 1488
 1489 i. The Hearing Officer will deliberate in closed session to
 1490 determine whether the respondent is responsible or not
 1491 responsible for the policy violation(s) in question. The
 1492 Hearing Officer will base the determination(s) on a
 1493 preponderance of the evidence (i.e. whether it is more
 1494 likely than not that the respondent committed each
 1495 alleged violation).
 1496
 1497 ii. If the Hearing Officer concludes that there has been a
 1498 violation of the College's 31001-Sexual Misconduct
 1499 Policy, the final determination and implementation of
 1500 sanctions will be formulated in consultation with the
 1501 appropriate administrators/disciplinary authority:
 1502
 1503 a) The Hearing Officer and The Director of
 1504 Employee and Labor Relations and the Chief
 1505 Human Resources Officer (for matters where the
 1506 Respondent is an employee), or
 1507 b) The Hearing Officer and the appropriate Dean of
 1508 Student Affairs (for matters where the
 1509 Respondent is a student).
 1510
 1511 ~~iii.~~ All sanctions shall be consistent with the College's
 1512 applicable policies, depending on the identity of the
 1513 Respondent. ~~A list of all possible sanctions the College~~
 1514 ~~may impose is included in Appendix A of this Procedure.~~
 1515 ~~iv-iii.~~
 1516 a) Students: [Student Code of Conduct \(42001\)](#)
 1517
 1518 b) Employees: the College's [Disciplinary Action](#)
 1519 [and Suspension Policy \(34002/32002CP\)](#), the
 1520 College's [Discharge of Administrators and Staff](#)
 1521 [Policy \(34003/34003CP\)](#), the [Personnel](#)
 1522 [Grievance Process for Non-Bargaining Staff](#)
 1523 [\(34101/34101CP\)](#), the grievance procedure

Commented [RKJ36]: Appendix stricken.

1524 under applicable [collective bargaining](#)
1525 [procedures](#), or any other applicable processes.
1526

1527 f. Notice of Outcome
1528

1529 i. The Hearing Officer will then prepare a written
1530 deliberation report and deliver it to the Title IX
1531 Coordinator, detailing the finding, the information used in
1532 support of its recommendation, and any information the
1533 Hearing Officer excluded from its consideration and why.
1534 The report should conclude with any sanctions. ~~This
1535 report typically should not exceed three (3) pages in
1536 length and must be submitted to the Title IX Coordinator
1537 within two (2) days of the end of deliberations, unless the
1538 Title IX Coordinator grants an extension. If an extension
1539 is granted, the Title IX Coordinator will notify the parties.~~
1540

1541 ii. The Hearing Officer, using the deliberation report, will
1542 prepare a letter of outcome and will share the letter with
1543 the parties, including the final determination and
1544 applicable sanction(s), within three (3) days of sending
1545 the deliberative report to the Title IX Coordinator. The
1546 letter of outcome will be shared with the parties without
1547 significant time delay between notifications. Notification
1548 will be made in writing and may be delivered by one or
1549 more of the following methods: in person, mailed to the
1550 local or permanent address of the parties as indicated in
1551 official Institution records, or emailed to the parties'
1552 Institution-issued email account. Once mailed, emailed
1553 and/or received in-person, notice will be presumptively
1554 delivered. The letter of outcome will contain the following
1555 information:

- 1556 a) Identify the specific policy(ies) reported to have
1557 been violated, including the relevant policy
1558 section;
- 1559 b) a description of the procedural steps taken by
1560 the College from the receipt of the misconduct
1561 report to the determination, including any and all
1562 notifications to the parties, interviews with
1563 parties, and witnesses, site visits, methods used
1564 to obtain evidence, and hearings held.
- 1565 c) specify the finding on each alleged policy
1566 violation; the findings of fact that support the
1567 determination; conclusions regarding the
1568 application of the relevant policy to the facts at
1569 issue; a statement of, and rationale for, the
1570 result of each allegation to the extent the
1571 College is permitted to share such information
1572 under state or federal law;
- 1573 d) any corrective actions issued which the College
1574 is permitted to share according to state or
1575 federal law; and any remedies provided to the
1576 complainant designed to ensure access to the

Commented [RKJ37]: Not required by regulations.
ATIXA recommended removing page limit and time to
issue

1577 College's educational program or activity, to the
 1578 extent the College is permitted to share such
 1579 information under state or federal law; and
 1580 e) the notification will also include information on
 1581 when the results are considered by the College
 1582 to be final, any changes that occur prior to
 1583 finalization, and the relevant procedures and
 1584 bases for any appeals options that are available.
 1585

VII. Appeals

1586
 1587
 1588 A. Both parties have an opportunity to appeal from a determination regarding
 1589 responsibility, and from the College's dismissal of a formal complaint or any
 1590 allegations therein.

1591
 1592 A.B. The Complainant or the Respondent can file an An appeal must be filed the
 1593 findings of the hearing within ten (10) working business days after receiving the
 1594 final report notice of dismissal or notice of outcome. After this ten-day timeframe,
 1595 the right to appeal has been waived.

1596
 1597 B.C. The grounds for appeal are limited to:

1598
 1599 1. A procedural error or omission occurred that significantly affected the
 1600 Hearing Findings and/or Determination outcome.
 1601 (e.g., substantiated bias, material deviation from established procedures,
 1602 etc.);

1603
 1604 4.2. To consider new evidence, unknown or unavailable during the original
 1605 Investigation, that could substantially impact the Investigative Findings
 1606 and/or Determination (a summary of this new evidence and its potential
 1607 impact must be included in the written statement of appeal);

1608
 1609 2. The Title IX Coordinator, investigator(s), or decision-maker(s) had a
 1610 conflict of interest or bias for or against complainants or respondents
 1611 generally or the individual complainant or respondent that affected the
 1612 outcome of the matter.

1613
 1614 3.

1615 4. The recommended Corrective Actions are substantially disproportionate
 1616 to the severity of the violation or fall outside the range of sanctions the
 1617 College has designated for purposes of its 31001 - Sexual Misconduct
 1618 Policy.

1619
 1620 C. A written request must be sent to the designated Senior Vice President or
 1621 designee, hereinafter collectively referred to as the Reviewing Official:

1622
 1623 1. The Senior Vice President for Administrative and Fiscal Services (for
 1624 employees)

1625
 1626 2. The Senior Vice President for Student Affairs (for students)

1627
 1628 D. The designated Senior Vice President may elect to serve as the Reviewing
 1629 Official or designate another administrator to serve as the Reviewing Official. In

Commented [RKJ38]: These items are addressed below and shouldn't be included in parentheses here.

- 1630 any case, the Reviewing Official shall not have a conflict of interest or bias for or
 1631 against the Complainant or the Respondent. The Complainant or the Respondent
 1632 may submit a written request to the Reviewing Official, with a copy to the
 1633 designated Senior Vice President, that the Reviewing Official excuse him/herself.
 1634 The grounds for such request are limited to: (1) claim of bias, (2) conflict of
 1635 interest, and (3) inability to be fair or impartial. The request must clearly state the
 1636 grounds to support a claim of bias, conflict of interest, or an inability to be fair and
 1637 impartial. This challenge must be raised within two (2) days after receipt of the
 1638 Investigative Summary. The designated Senior Vice President shall grant or deny
 1639 the recusal request within two (2) days after receipt of the request.
 1640
- 1641 E. Upon receipt of an appeal, the Reviewing Official or ~~his/her~~ their designee shall
 1642 notify the non-appealing person or persons, and the Title IX Coordinator. The
 1643 Reviewing Official will provide both parties a reasonable, equal opportunity to
 1644 submit a written statement in support of, or challenging, the outcome;
 1645
- 1646 F. The Reviewing Official or ~~his/her~~ their designee will generally be limited to a
 1647 review of the Investigative Report ~~and evidence file~~ (i.e., the materials collected
 1648 by the Investigator in the course of conducting the Investigation), the hearing
 1649 recording, the Hearing Officers deliberative report, the College's 31001-Sexual
 1650 Misconduct Policy, and any other appropriate College policy and the
 1651 Respondent's and/or Complainant's written appeal. The Reviewing Official, or
 1652 ~~his/her~~ their designee, may, in ~~his/her~~ their sole discretion, ask the Title IX
 1653 Coordinator, the investigator, or the Hearing Officer to clarify the Investigation
 1654 report, hearing procedure and deliberative report, or ~~remand the report back to~~
 1655 ~~perform for~~ additional investigation concerning any new evidence identified in the
 1656 appeal or to assist in determining whether there was, in fact, a procedural error, if
 1657 such Reviewing Official or ~~his/her~~ their designee believes such an alleged error
 1658 may have affected the outcome of the Investigation/Hearing and the
 1659 Findings/Determination by the Hearing Officer.
 1660
- 1661 G. If the Reviewing Official or ~~his/her~~ their designee determines in the course of
 1662 ~~his/her~~ their review that there was a procedural error that substantially affected
 1663 the outcome of the Investigation ~~to the material prejudice of the person or~~
 1664 ~~persons filing the appeal~~, or that other circumstances exist requiring additional
 1665 Investigation and hearing, the Reviewing Official shall order the Investigation and
 1666 hearing to be reopened subject only to direction/supervision by and any
 1667 terms/conditions imposed by the Reviewing Official (including, in any case in
 1668 which substantial bias was present, appointment of a new Investigator or Hearing
 1669 Officer). No disciplinary action may be carried out prior to the Reviewing Official
 1670 or ~~his/her~~ their designee expressly so directing in ~~his/her~~ their ~~final written~~
 1671 ~~determination~~ Notice of Appeal Outcome.
 1672
- 1673 H. Within fifteen (15) days after the Reviewing Official receives the appeal, the
 1674 Reviewing Official or her or his designee shall issue a ~~final written~~
 1675 ~~determination~~ Notice of Appeal Outcome either upholding the Hearing Findings
 1676 and Determination and recommended Corrective Action of the Hearing Officer or
 1677 ~~remanding the case back to the Investigator, or reversing the Hearing Findings~~
 1678 ~~and/or Determination and/or recommended Corrective Action, and providing~~
 1679 ~~specific reasons for such reversal~~. The ~~written determination~~ Notice of Appeal
 1680 Outcome of the Reviewing Official shall be final and will be forwarded
 1681 simultaneously to the Complainant, Respondent, the Title IX Coordinator,

1682 appropriate Senior Vice President, campus Vice President and Provost, and the
1683 General Counsel.

- 1684
- 1685 1. In the case of an appeal involving a student (i.e., in which either the
- 1686 Complainant and/or Respondent is a student), a copy of the ~~written~~
- 1687 ~~determination~~ Notice of Appeal Outcome of the Reviewing Official shall
- 1688 be forwarded to the appropriate Dean or to the appropriate campus Vice
- 1689 President and Provost.
- 1690
- 1691 2. In the case of an appeal involving a staff member (i.e., in which either the
- 1692 Complainant and/or Respondent is a staff member), a copy of the ~~written~~
- 1693 ~~determination~~ Notice of Appeal Outcome of the Reviewing Official shall
- 1694 also be forwarded to the Director of Employee and Labor Relations, the
- 1695 Associate Senior Vice President of Human Resources and Strategic
- 1696 Talent Management, the employee's immediate supervisor, and other
- 1697 appropriate administrators.
- 1698
- 1699 3. In the case of an appeal involving a faculty member (i.e., in which either
- 1700 the Complainant and/or Respondent is a faculty member), a copy of the
- 1701 ~~written determination~~ Notice of Appeal Outcome of the Reviewing Official
- 1702 shall be forwarded to the Director of Employee and Labor Relations, the
- 1703 Associate Senior Vice President of Human Resources and Strategic
- 1704 Talent Management, the Senior Vice President for Academic and
- 1705 Student Services, the Instructional Dean who has supervisory authority
- 1706 over the faculty member's academic department, and other appropriate
- 1707 administrators.
- 1708

1709 VIII. Implementation of Corrective Action

- 1710
- 1711 A. ~~A.~~ — If a notice of appeal is not submitted to the appropriate Senior Vice
- 1712 President in accordance with Section VII. above, the appropriate
- 1713 administrators/disciplinary authority shall act to implement the recommended
- 1714 Corrective Action as soon as possible, but no later than twenty (20) days after
- 1715 the appropriate administrators/disciplinary authority receives notice of the
- 1716 corrective action. ~~a copy of the Investigative Summary.~~
- 1717
- 1718 B. ~~B.~~ — If a notice of appeal is submitted to the appropriate Senior Vice
- 1719 President, the appropriate unit administrator/disciplinary authority shall act to
- 1720 implement recommended Corrective Action as soon as possible but no later than
- 1721 twenty (20) days after the appropriate unit administrator/disciplinary authority
- 1722 receives a copy of the ~~Reviewing Official's final written determination~~ Notice of
- 1723 Appeal Outcome containing the final recommended Corrective Action.
- 1724
- 1725 ~~C.~~ — Notwithstanding the foregoing, in cases where the Complainant or Respondent is
- 1726 an employee covered by a collective bargaining agreement, the employee may
- 1727 seek review of the recommended Corrective Action (or, if an appeal has been
- 1728 filed, the ~~Reviewing Official's final written determination~~ Notice of Appeal
- 1729 Outcome) under any grievance procedures available under the employee's
- 1730 collective bargaining agreement. If both Complainant and Respondent are
- 1731 employees covered by different collective bargaining agreements, the grievance
- 1732 procedures in the agreement that covers the party challenging the decision shall
- 1733 be used. If a Complainant or Respondent covered by a collective bargaining
- 1734 agreement seeks review of the recommended Corrective Action through the

1735 applicable agreement's grievance procedure, ~~he/she/they~~ may not also appeal
 1736 the recommended Corrective Action under this Procedure. However, a
 1737 Complainant or Respondent may appeal a recommended Corrective Action
 1738 under this Procedure and then seek review of the ~~Reviewing Official's final~~
 1739 ~~written determination~~ Notice of Appeal Outcome under the grievance procedure of
 1740 the applicable collective bargaining agreement.

1741 D.C.

1742 D. — If the Hearing Officer makes a Finding or the Reviewing Official makes a
 1743 final written determination that there has been a violation of the College's policy
 1744 with respect to a grade awarded to a student, the Hearing Officer or the
 1745 Reviewing Official shall make no determination with respect to the Corrective
 1746 Action to be taken regarding a specific grade assignment. The Hearing Finding or
 1747 final written determination shall be forwarded to the Complainant, Respondent,
 1748 and the appropriate Dean, who shall select a review committee in accordance
 1749 with the procedures stated in the Academic Regulations for the review of
 1750 allegations of arbitrary and capricious grading. The Committee, which is
 1751 established pursuant to 53001-Academic Regulations to review allegations of
 1752 arbitrary and capricious grading, shall have no authority to reverse the
 1753 Investigative Finding or Determination of the Investigator or the final written
 1754 determination of the Reviewing Official, and shall confine its consideration to a
 1755 determination of the appropriate Corrective Action with respect to the grade. The
 1756 Committee shall, within twenty (20) days after appointment of the Committee and
 1757 its receipt of the Initial Finding and Determination or final written determination,
 1758 forward to the Investigator and the Reviewing Official, Complainant, and
 1759 Respondent a written recommendation as to the appropriate Corrective Action
 1760 with respect to the grade.

1761 — Within ten (10) days after receipt of the written recommendation of that
 1762 Committee, the Senior Vice President for Academic Affairs and the Senior Vice
 1763 President for Student Services shall review the recommendation of the
 1764 Committee and, upon completing such review, shall issue a final written
 1765 determination of the Corrective Action with respect to the grade she or he
 1766 determines to be appropriate for such violation (which she/he shall implement),
 1767 and a copy of which shall be forwarded to the Complainant, Respondent,
 1768 Reviewing Official, and Hearing Officer.

1772 IX. Notice of Final Outcomes

1773 ~~Once an appeal has exhausted the process set forth above, the Notice of Appeal~~
 1774 ~~Outcome is the final administrative decision of the College. Once all of the above~~
 1775 ~~processes are concluded, whatever decision is made regarding Investigative Findings,~~
 1776 ~~Determinations, and/or Corrective Action is the final administrative decision of the~~
 1777 ~~College in the matter.~~ The Title IX Coordinator shall simultaneously send the Notice of
 1778 Appeal Outcome to notify the Complainant and Respondent by sending the Notice of
 1779 Appeal Outcome.

1782 X. Sanctions

1783 A. Both parties shall be informed of the outcome of any investigation and
 1784 adjudicative process based on a violation of this policy. The College shall not
 1785 ~~publically~~ publicly disclose personally identifiable information about either of the
 1786 parties, except as required by law.

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- B. Employees found in violation of this policy are subject to a range of disciplinary action up to and including discharge, depending on the circumstances (See Appendix I for possible sanctions).
- C. Students found in violation of this policy are subject to disciplinary action based on the circumstances and nature of the violation. Sanctions include, but are not limited to dismissal from the College (suspension or expulsion) and other sanctions provided by 41001-Student Code of Conduct (See Appendix I for possible sanctions).
- D. Persons who commit Sexual Misconduct in violation of federal, state, or local law may also be subject to criminal charges and penalties.

XI. Records

- ~~A.~~ The Title IX Coordinator and the Director of Employee and Labor Relations will retain records of all reports, regardless of whether the matter is resolved by means of an Initial Title IX Assessment, Informal Resolution or Investigation/Formal Resolution. Reports resolved by means of an Initial Title IX Assessment or Informal Resolution are not part of a student's conduct file or academic record or of an employee's labor relations personnel file.
- A. ~~R~~Records will be maintained by the Title IX Coordinator for (for-7) years.
- B. ~~B.~~ Affirmative findings of responsibility in matters resolved through Investigation/Formal Resolution are part of a student's conduct record and an employee's labor relations record. Such records shall be used in reviewing any further conduct, or developing sanctions, and shall remain a part of a student's conduct record or an employee's labor relations record.
- C. ~~C.~~ Generally, suspension, demotion, and discharge are permanently noted in an employee's labor relations record. The labor relations records of employees who have been suspended, demoted, or discharged are maintained in the Associate Senior Vice President for Human Resources and Strategic Talent Management Office according to the College's published retention schedule. Further questions about record retention should be directed to the Associate Senior Vice President for Human Resources and Strategic Talent Management Office.
- D. ~~D.~~ Generally, suspension, expulsion, and withdrawal are permanently noted on a student's transcript. The conduct files of students who have been suspended or expelled from the College are maintained in the Senior Vice President of Student Services Office indefinitely. Conduct files of students who have not been suspended or expelled are maintained in the Dean of Students office for no fewer than seven years from the date of the incident. Further questions about record retention should be directed to the Senior Vice President for Student Services office.

XII. Time Limits

Working Business days are defined as all days during the calendar year other than Saturdays, Sundays, and days the College is closed.

1841 The Title IX Coordinator, Director of Employee and Labor Relations, and, where
1842 appropriate, the Senior Vice Presidents, or designees, may exercise reasonable
1843 discretion to adjust the time limits set forth in this procedure.
1844

1845 XIII. Receipt of Notification
1846

1847 Whenever, under these procedures, individuals must be notified in writing, a copy shall
1848 be served in person, by certified, return receipt requested mail to the address that is kept
1849 on file at the College, or via email. For purposes of computing any time frames under
1850 these procedures, where service is by US mail, the date of service shall be considered to
1851 be the third day after the postmarked date of the letter. It is the responsibility of the
1852 individual to ensure that the College has their current address on file.
1853

1854 XIV. Pursuant to the President's authority to establish the foregoing Procedure, the President
1855 may amend, modify, or supplement this Procedure, or replace the Procedure in whole or
1856 in part, at any time and from time to time.
1857

1858
1859 _____
1860 Administrative Approval: June 29, 2015; October 28, 2015; October 11, 2018; June 18, 2019;
September 7, 2021

Appendix A: Possible Sanctions Available Under College Policies and Procedures

Employee Disciplinary Action and Suspension (34002)

The kinds of disciplinary action are as follows:

- ~~— Oral Warning: A private discussion held between the supervisor and the employee to discuss the employee's problem and to afford the employee an early opportunity to correct the problem.~~
- ~~— Written Warnings or Written Reprimands: Written disciplinary documentation of an employee's problem which needs to be corrected.~~
- ~~— Disciplinary Suspension: The required unpaid absence of an employee from work for a serious violation or offense. Suspensions should be for a specified period of time, related to the seriousness of the offense.~~
- ~~— Disciplinary Demotion: The involuntary movement of an employee from one position to another position at a lower pay grade as a result of the employee's poor performance or disciplinary action.~~

Discharge of Administrative, Associate, and Support Staff (Policy 34003)

Any employee whose behavior, act(s) or performance is unacceptable shall be subject to dismissal for cause.

Student Code of Conduct (Procedure 42001)

The following sanctions may be imposed on any student or student organization found to have violated the Student Code of Conduct:

- ~~W. Dismissal: Permanent denial of the privilege of enrollment at the College.~~
- ~~Y. Emergency Suspension: A suspension imposed prior to a discipline review or appeal when necessary to ensure the safety and well-being of the members of the College. This action is recommended by the campus Dean of Student Development and approved by the Vice President/Provost or designee. Upon the completion of the discipline review, additional sanctions may be imposed.~~
- ~~AA. Suspension: Denial of the privilege of enrollment for a specified period of time after which the student is eligible to return. During this time the student cannot qualify for graduation, register for or attend classes or other College functions.~~
- ~~CC. Disciplinary Probation: Continued enrollment at the College but only under special conditions for a specified period of time. Conditions may include exclusion from a particular area of the College, participation in the specific activities of the College, or denial of related privileges and/or services. Misconduct during the probationary period or violation of any conditions of the probation may result in more severe disciplinary action, up to and including dismissal.~~
- ~~EE. Restitution: Required reimbursement for damage to or misappropriation of property. This may take the form of appropriate services or other compensation.~~

Commented [REJ39]: 34002 is referenced in 31001, but the language in 31001's appendix is difficult to keep current whenever 34002 is updated. (I.e., a change in the text of 34002 would necessitate the modification of two P&Ps.) It is preferable to incorporate 34002 by reference within 31001.

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- 1914 ~~Community Service. Requires a set number of hours of uncompensated service~~
1915 ~~to the College or a community agency.~~
1916
1917 ~~II. Warning. Issuance of a written warning, admonition, or reprimand.~~
1918
1919 ~~KK. Permanent Record. Entries regarding the disciplinary conference will be added to the~~
1920 ~~student's permanent record at Montgomery College. These records will be kept for seven~~
1921 ~~years and will be disclosed only in accordance with applicable federal and state law.~~
1922 ~~These records will be expunged if a student is found not to have violated the Code of~~
1923 ~~Conduct.~~
1924
1925 ~~MM. Administrative Hold. Placing a hold on all student academic files so that the~~
1926 ~~student may not register. This sanction may be imposed where a student withdraws from~~
1927 ~~the College prior to or during disciplinary proceedings.~~
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1929 ~~OO.A. Organizational Sanctions. Sanctions for organizational misconduct may include~~
1930 ~~revocation of the use of College premises or privileges for a specified period of time,~~
1931 ~~revocation or denial of recognition or registration, or suspension of activities or events, as~~
1932 ~~well as other appropriate sanctions.~~