

SEXUAL AND GENDER BASED HARASSMENT PROCEDURE

Mississippi Delta Community College is committed to maintaining a safe and healthy educational and work environment in which no member of the College community is, on the basis of sex, sexual orientation, or gender identity, excluded from participation in, denied the benefits of, or subjected to discrimination in any College program or activity. Gender-based and sexual harassment, including sexual violence, are forms of sex discrimination in that they deny or limit an individual's ability to participate in or benefit from College programs or activities.

This procedure is designed to ensure a safe and non-discriminatory educational and work environment and to meet legal requirements, including: Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in the College's programs or activities; relevant sections of the Violence Against Women Reauthorization Act; Title VII of the Civil Rights Act of 1964, which prohibits discrimination on the basis of sex in employment; and Mississippi laws that prohibit discrimination on the basis of sex. It does not preclude application or enforcement of other College or School policies.

It is the responsibility of the College to provide educational, preventative and training programs regarding sexual or gender-based harassment; to encourage reporting of incidents; to prevent incidents of sexual and gender-based harassment from denying or limiting an individual's ability to participate in or benefit from the College's programs; to make available timely services for those who have been affected by discrimination; and to provide prompt and equitable methods of investigation and resolution to stop discrimination, remedy any harm, and prevent its recurrence. Violations of this procedure may result in the imposition of sanctions up to, and including, termination, dismissal, or expulsion, as determined by the appropriate officials at the School or program.

Retaliation

This procedure seeks to encourage students, staff, and faculty to express freely and responsibly their concerns about any possible instances of sexual harassment. Any act of reprisal (e.g., interference, restraint, penalty, discrimination, coercion or harassment)--overt or covert--by a college faculty member, employee, agent, or student against another who is responsibly using this procedure and its procedures interferes with free expression and openness. Such acts violate this procedure and require prompt and appropriate disciplinary action.

Definition

As defined in the guidelines of the Equal Employment Opportunity Commission and adopted by the United States Supreme Court in *Meritor Savings Bank, FSB v. Vinson*, 477 U.S. 57 (1986), sexual harassment of employees or students includes any unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when:

- (1) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or status in a course, program, or activity; or
- (2) Submission to or rejection of such conduct is used as the basis for employment or educational decisions affecting that individual; or
- (3) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or educational experience, or creates an intimidating, hostile, or offensive environment for working or learning.

Examples of Sexual Harassment: Examples of prohibited verbal, nonverbal or physical conduct include, but are not limited to:

- (1) Physical assault;
- (2) Direct or implied threats that submission to sexual advances will be a condition of employment, work status, promotion, grades, or letters of recommendation;
- (3) A pattern of conduct intended to discomfort or humiliate, or both, that includes:
 - (a) Comments of a sexual nature;
 - (b) Sexually explicit statements, questions, jokes, or anecdotes;

- (c) Persistent propositions of a sexual nature;
- (d) Subtle pressure for sexual activity;
- (4) A pattern of conduct that would discomfort or humiliate, or both, a reasonable person to whom the conduct was directed that includes:
 - (a) Unnecessary touching, patting, hugging, or brushing against a person's body;
 - (b) Remarks of a sexual nature about a person's clothing or body;
 - (c) Remarks about sexual activity;
- (5) Use of electronic mail or computer dissemination of sexually oriented, sex-based Communications.

Sexual harassment is often a specific form of discrimination in which the power inherent in a faculty member's or supervisor's relationship to his or her students or subordinates is exploited. While sexual harassment most often takes place in a situation of differential professional power between the persons involved, this procedure recognizes that sexual harassment may occur between persons of the same college status, e.g., student-student, faculty-faculty, staff-staff. It may occur where inverse power relationships exist as when a student exhibits such behavior toward faculty or staff. It may occur between persons of the same sex. Behaviors may be initiated by both men and women. Persons who are negatively affected by others' behavior, even though the behavior is not directed towards them, may bring claims of third-party harassment.

Groundless Charges or Malicious Mischief

Accusations of sexual harassment are serious matters. They should never be made casually and without cause. This procedure shall not be used to bring groundless and malicious charges against students, faculty members, or employees. Disciplinary action concerning personal misconduct may be taken under the appropriate faculty and staff personnel policies or the Student Code of Conduct against any person bringing a groundless and malicious charge of sexual harassment. Bringing groundless and malicious charges may also result in legal liability for the person filing the charges.

The same sanctions appropriate to a violation of sexual harassment procedure shall apply to those who bring charges in bad faith

Sanctions Resulting From Findings of a Violation

The following sanctions are applicable to all MDCC Faculty/Staff and Students when a finding or a violation of the sexual harassment procedure has been determined, or when frivolous or malicious charges have been brought.

A first offense could be grounds for dismissal, and more than one sanction may be imposed for any single offense. Administrators responsible for implementing sanctions will report to the complainant the sanction that has been imposed.

Sanctions for faculty and professional staff:

- Written or oral warning
- Formal reprimand placed in the respondent's permanent file
- Reassignment of duties (e.g., teaching or service duties involving students)
- Reduction in salary for one or more years
- Suspension without pay
- Dismissal

Sanctions for classified staff:

- Warnings and written reprimands
- Dismissals, demotions and suspensions

Sanctions for students:

- Warning, oral or written
- Reprimand in writing
- Restitution
- Probation
- Suspension
- Expulsion

For purposes of this procedure, the following definitions apply:

Advisor is a person of a party's choice, who may be an attorney, who may accompany the party during any meeting or proceeding under this Procedure.

Complainant means a person who has allegedly been subject to sexual misconduct, and for whom a formal or informal complaint has been made with the College; the College may also be a complainant.

Consent means a knowing, voluntary, and affirmatively communicated willingness to mutually participate in sexual conduct; from an individual with the ability and capacity to exercise free will and make a rational and reasonable judgment; expressed either by affirmative words or actions, as long as the words or actions create a mutually understandable permission regarding the conditions of sexual activity. Consent can be withdrawn at any time. Consent cannot be obtained where there is any hint of force, threat, coercion, fraud, manipulation, intimidation, or reasonable fear of injury, or through the use of a party's mental or physical helplessness or incapacity. Consent cannot be implied from acquiescence or based upon the mere fact of previous consensual dating or sexual relationship. Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another.

Dating Violence means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant. The existence of such a relationship shall be determined based on a consideration of the length of the relationship, the type of relationship and the frequency of interaction between the persons involved in the relationship.

Decision-Maker: This refers to those who have decision-making and sanctioning authority within the Formal Grievance process.

Domestic Violence means violence committed by a current or former spouse or intimate partner of the complainant, by a person with whom the complainant shares a child in common, by a person who is cohabitating with or has cohabitated with the complainant as a spouse or intimate partner, by a person similarly situated to a spouse of the complainant, or by any other person against an adult or youth complainant.

Hostile Environment means an environment in which a student or employee is sexually harassed and the harassing conduct is sufficiently serious to deny or limit the student's ability to participate in or benefit from a College program or activity.

Interim Measures means reasonable available steps an institution may take to protect the parties while a sexual misconduct investigation is pending.

Notice means that an employee, student, or third-party informs the Title IX Coordinator or other Official with Authority of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct.

Notice of Investigation and Allegations is deemed to have been properly provided when written notification of the allegations and alleged code of conduct violation is sent to the student's or employees assigned MDCC email address and/or delivered via Certified Mail to the local or permanent address(es) of the parties as indicated in official MDCC records, or personally delivered to the student or employee. Students, staff, and faculty are responsible for all communication delivered to their college email address.

Personal Identifying Information means any information about an individual maintained by an agency, including (1) any information that can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records; and (2) any other information that is linked or linkable to an individual, such as medical, or financial information.

Preponderance of the Evidence means the evidence demonstrates it is more likely than not the conduct occurred; in other words, greater than 50% however slightly over 50%. This standard is often referred to as "50% plus a feather."

Respondent means a person or persons who have been formally or informally accused of engaging in acts of sexual misconduct and may be subject to College imposed sanctions.

Responsible Employee includes any employee who (1) has the authority to take action regarding sexual misconduct; (2) is an institution administrator, non-confidential employee in a supervisory role, a faculty member, a athletic coach, institution law enforcement officer, or other non-confidential first responders; or (3) is someone an individual could reasonably believe has this authority or duty, such as resident advisors.

Retaliation means intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or MDCC procedure relating to sexual misconduct, or because an individual has made a report, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing related to sexual misconduct. Retaliation includes retaliatory harassment.

Sexual Assault – Non-Consensual Sexual Intercourse. Any act of sexual intercourse with another individual without consent. Sexual intercourse includes vaginal or anal penetration, however slight, with any body part or object, or oral penetration involving mouth-to-genital contact.

Sexual Harassment is any unwelcome sexual advance, unwelcome request for sexual favors, or other unwelcome verbal or physical conduct of a sexual nature when: (1) Submission to or rejection of such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment, evaluation of academic work, or participation in any aspect of the College; (2) Submission to or rejection of such conduct by an individual is used as the basis for academic, employment, or activity or program participation related decisions affecting an individual; or (3) Such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance, i.e., it is sufficiently severe or pervasive to create an intimidating, hostile, humiliating, demeaning or sexually offensive working, academic, residential or social environment.

**MISSISSIPPI DELTA COMMUNITY COLLEGE
Procedures for Handling Complaints Involving Students
Pursuant to the Sexual and Gender-Based Harassment Procedure**

The Title IX Coordinator has been charged with implementing the following procedures for students pursuant to the Sexual and Gender-Based Harassment Procedure. An investigator from the Campus Police Department will serve as the Title IX Investigative Officer who will report directly to the Title IX Coordinator.

MDCC students, faculty, staff, or third parties may request information or advice, including whether certain conduct may violate the procedure; seek informal resolution; or file a formal complaint. These three options are described below. Initiating Parties are encouraged to bring their concerns to the Title IX Coordinator.

As set forth below, interim measures designed to support and protect the Initiating Party or the College community may be considered or implemented at any time, including during a request for information or advice, informal resolution, or a formal complaint proceeding. Consistent with the College's procedure, interim measures might include, among others: restrictions on contact; course-schedule alteration; changes in housing; leaves of absence; or increased monitoring of certain areas of the campus. These interim measures are subject to review and revision throughout the processes described below.

I. Confidential Resources

In order to make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On campus, some resources may maintain confidentiality, meaning they are not required to report actual or suspected discrimination or harassment to appropriate college officials. They can offer options and advice without any obligation to inform an outside agency or campus official unless a Complainant has requested information to be shared. Therefore, those individuals whose offices have been designated, as a "Confidential Resource" is not are not required to make reports to the Title IX Coordinator. However, these individuals are encouraged, in appropriate circumstances, to recommend that the Complainant contact the Office of Title IX. If a Complainant would like the details of an incident to be kept confidential, the Complainant may speak with the following on-campus Confidential Resources:

- Counseling Services (Main Campus) 662-246-6461
- Counseling Services (Greenville) 662-332-8011
- Counseling Services (Greenwood) 662-453-7377

II. Mandatory Reporting of Child Abuse to Campus Police

For child protection purposes, a child is any person under 18 years of age. A freshman student, a "dual enrolled" high school student, or a summer camp participant, among others, may fall into the category of a "child." The College encourages those with responsibilities that involve interaction with children, including students, volunteers, and representatives as well as third-party vendors and their employees, representatives, and/or volunteers, that contract for use of College facilities to report (orally and then in written form) known or suspected child abuse to Campus Police. Sexual abuse, which is one element of the more comprehensive term "abuse" under Mississippi law, includes actual or attempted rape, molestation, sexual exploitation, etc.

III. Jurisdiction

The College retains jurisdiction to address all categories of prohibited conduct under this procedure when:

- The Respondent is a College student, staff-member, or faculty member;
- If the conduct occurs on-campus, off campus location which the college exercises control over, or at a College-sponsored event

IV. Supportive Measures

Supportive measures are non-disciplinary, non-punitive, and individualized services offered as appropriate, as reasonably available, without fee or charge to the parties before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the College's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the College's educational environment, or deter sexual harassment. The College will institute supportive measures to the parties upon receiving a formal complaint or to a Complainant once a report is brought forth to the Title IX Coordinator. At the time that supportive measures are offered, the Title IX Coordinator will inform the Complainant, in writing, that they may file a formal complaint with the University either at that time or in the future, if they have not done so already. If a supportive and remedial response is preferred, the Title IX Coordinator works with the Complainant to identify their wishes and then seeks to facilitate implementation. The grievance process is not initiated, though the Complainant can elect to initiate it later, if desired. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures. Supportive measures will be provided confidentiality, to the extent they can be, without interfering with the College's ability to provide the supportive measures, and will always be provided in a way that is as private as possible. Support measures will be implemented under this procedure pursuant to procedures developed by the Title IX Coordinator.

V. Emergency Removal

After a complaint has been received, the Title IX Coordinator may remove a Respondent from the college's education programs and/or activities on an emergency basis, if an individualized safety and risk analysis determines an immediate threat to the physical health OR safety of any student or other individual and that the threat arises from the allegations under this procedure. If, after an individualized safety and risk analysis, an Emergency Removal occurs, the Respondent will be provided with notice and an opportunity to challenge the decision immediately following the removal. Procedures for conducting the individualized safety and risk analysis will be determined by the Title IX Coordinator in coordination with appropriate College offices. Procedures for conducting the opportunity to challenge the decision will be determined by the Title IX Coordinator. Non-student employee Respondents may be placed on Administrative Leave during the pendency of any investigation.

II. Requests for Informal Resolution

Initiating Parties may make a request, either orally or in writing, for informal resolution to the Title IX Coordinator. The request should identify the alleged harasser (if known) and describe the allegations with specificity. The Title IX Coordinator will assess the severity of the alleged harassment and the potential risk of a hostile environment for others in the community to determine whether informal resolution may be appropriate.

Upon determining that informal resolution is appropriate, and in instances when the Initiating Party makes the request to the Title IX Coordinator. The Title IX Coordinator will consult further with the person initiating the request, inform the person who is the subject of the allegations, and gather additional relevant information as necessary from the parties and others, as indicated. The Title IX Coordinator also may put in place any appropriate interim measures to protect the educational and work environment. The Title IX Coordinator will attempt to aid the parties in finding a mutually acceptable resolution.

When the allegations, if true, might constitute criminal conduct, the party against whom they are brought is hereby advised to seek legal counsel before making any written or oral statements. Those facing allegations may wish to obtain legal advice about how this process could affect any criminal case in which they are or may become involved.

A matter will be deemed satisfactorily resolved when both parties expressly agree to an outcome that is also acceptable to the Title IX Coordinator. At any point prior to such an express agreement, the Initiating Party may withdraw the request for informal resolution and initiate a formal complaint under these Procedures.

Ordinarily, the informal resolution process will be concluded within two to three weeks of the date of the request.

III. Confidentiality

The Title IX Coordinator, the Title IX Investigative Officer and others at the College involved in or aware of the complaint will take reasonable steps to protect the privacy of all involved. Once a complaint is filed, the Complainant, the Respondent, and any witnesses will be notified of the potential for compromising the integrity of the investigation by disclosing information about the case and the expectation that they therefore keep such information – including any documents they may receive or review – confidential. They also will be notified that sharing such information might compromise the investigation or may be construed as retaliatory. Retaliation of any kind is a separate violation of the procedure and may lead to an additional complaint and consequences.

The parties remain free to share their own experiences, other than information that they have learned solely through the investigatory process, though to avoid the possibility of compromising the investigation, it is generally advisable to limit the number of people in whom they confide.

IV. Request to Withdraw the Complaint

While every effort will be made to respect the Complainant's wishes to withdraw a formal complaint, the College must be mindful of its overarching commitment to provide a non-discriminatory environment. Thus, in certain circumstances, the Title IX Coordinator may determine that investigation is appropriate despite a Complainant's request to withdraw the complaint or failure to cooperate. Other circumstances also may result in a request to withdraw the complaint being declined, where, for example, a request to withdraw is made after a significant portion of the investigation has been completed and terminating the investigation would be inequitable.

V. Request for Informal Resolution After a Complaint has Been Filed Once a complaint has been opened for investigation and before the final report has been provided to the parties, a party may request informal resolution as an alternative to formal resolution of the complaint, but that disposition requires agreement of the Complainant and the Respondent and the approval of the Title IX Coordinator.

If such a request is approved, the timeframes will be stayed, and the Title IX Coordinator will take such steps as he or she deems appropriate to assist in reaching a resolution. If the parties cannot reach an informal resolution within two weeks from receipt of the request, then the Title IX Investigative Officer will resume the investigation of the complaint in accordance with the formal complaint procedures.

VI. Procedures for Formal Complaints

A. Initiating a Complaint

An Initiating Party may file a formal complaint alleging a violation of the Code of Conduct. A complaint of sexual or gender-based harassment should be filed directly with the Title IX Coordinator, regardless of the identity of the Respondent. (If the Respondent is not a student, see **Referral of Complaints Against Staff, Faculty, Other MDCC Officials, or Third Parties** below). The Title IX Coordinator will inform the Respondent that a complaint has been received, and, if indicated by the Complainant will put in place any appropriate interim measures.

A formal complaint must be in writing and signed and dated by a Complainant. It should state the name of the alleged harasser (if known) and describe with reasonable specificity the incident(s) of alleged harassment, including the date and place of such incident(s). The complaint must be in the Complainant's own words, and may not be authored by others, including family members, advisors, or attorneys. Attached to the complaint should be a list of any sources of information (for example, witnesses, correspondence and records, and the like) that the Complainant believes may be relevant to the investigation. However, a complaint should not be delayed if such sources of information are unknown or unavailable.

The Title IX Investigative Officer will not investigate a new complaint if it has already adjudicated a formal complaint based on the same circumstances or if the parties and the Title IX Coordinator already have agreed to an informal resolution based on the same circumstances.

B. Referral of Complaints Against Staff, Faculty, Other MDCC Officials, or Third Parties

When allegations are asserted against a staff member, faculty member, or other MDCC officials, or third party, the Title IX Coordinator will inform the appropriate Administrator with a copy of the complaint. The Title IX Coordinator, will determine if the Title IX Investigative Officer will need to conduct all or part of the investigation, and will inform the Complainant.

C. Timeframe for Filing a Complaint

The College does not limit the timeframe for filing a complaint. The College encourages complaints to be filed as soon as reasonably possible following an alleged procedure violation because the College's ability to gather adequate information may be limited where a significant length of time has elapsed between an incident and the filing of a complaint. Further, with respect to those cases that will be reviewed by disciplinary bodies at the conclusion of the investigation, the College's ability to complete its processes may be limited with respect to Respondents who have graduated from or are no longer employed by the College.

D. Initial Review

Once a formal complaint is received, the Title IX Coordinator will assign the case to the Title IX Investigative Officer for an initial review. The Title IX Investigative Officer will have appropriate training, so that they have the specialized skill and understanding to conduct prompt and effective sexual and gender-based harassment investigations.

The Title IX Investigative Officer will contact the Complainant in an attempt to gather a more complete understanding of the allegations. Based on the information gathered, the Title IX Investigative Officer will determine whether the information, if true, would constitute a violation of the procedure such that an investigation is warranted or whether the information warrants an administrative closure. The Title IX Investigative Officer will convey this determination to: the Complainant and the Title IX Coordinator. The Title IX Investigative Officer will work with the Title IX Coordinator to implement any appropriate interim measures to be put in place pending the completion of the case (or to revise as necessary any measures already in place).

Ordinarily, the initial review will be concluded within one week of the date the complaint was received.

E. Investigation

After the receipt of a formal complaint, a Notice of Investigation and Allegations (NOIA) will be sent to the parties. The notice will include sufficient details known at the time, including:

- The parties involved in the incident,
- The conduct allegedly constituting Prohibited Conduct, and the date and location of the alleged incident.
- A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
- That both parties may have an advisor of their choice, who may be, but is not required to be, an attorney, as described under this procedure.
- That both parties may inspect and review evidence as described under this procedure.

The Title IX Coordinator will assign one or more Investigators to meet with the parties and witnesses, gather evidence, and conduct the investigation.

F. Evidentiary Review

After the Investigator has sorted the evidence and begun working on the Investigative Report, the parties will be given ten days to review the evidence. Each Party, along with their advisor(s), will have the opportunity to review and respond to all evidence collected pursuant to the procedures developed under this procedure by the Title IX Coordinator.

After all parties have had a minimum of ten days to review all evidence collected the Investigator(s) will draft the Investigative Report. The report will include all relevant evidence collected during the investigative stage. Each party will receive a copy of the Report and have the opportunity to review and respond to the Report.

G. Hearing

At the conclusion of the investigation a hearing will follow. Both parties in question shall be notified, in writing, of the alleged allegation(s) and of the date, time, and place of the hearing. Every effort will be made to schedule a hearing within (10) working days after the completion of the Investigative Report.

Notice will be sent to the students or employees MDCC email address, and to the home address listed on file at the College.

The hearing will be recorded. A recording and/or a transcript of any live hearing will be made available to the parties for inspection and review. The hearing will be overseen by a non-voting Hearing Administrator. The hearing will consist of three individuals who will serve on the Hearing Committee. The Title IX Coordinator and the Title IX Investigators are prohibited from serving on the Hearing Committee. Both parties have the right to:

1. Be present at the hearing. However, if either or both the student in question and complainant fail to appear at the hearing after being properly notified, the hearing may be held in their absence and a decision rendered accordingly, based on evidence presented.
2. Present evidence by witness, or by signed written statement if a witness is unable to attend the hearing. It is the responsibility of complainant to notify their witnesses of the date, time, and place of the hearing. If witnesses fail to appear, the hearing may be held in their absence.
3. Bring an advisor of his/her choice to the hearing who may question their advisee and cross exam the other party.
4. Be informed of the disciplinary outcome.

At the conclusion of the hearing, the committee will submit their findings to Title IX Coordinator who will be responsible for notifying both parties of the decision.

H. Appeals

All parties will be entitled to an appeal based on the following grounds:

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time of the determination regarding responsibility, that could affect the outcome of the matter; and/or
- The Title IX Coordinator, investigator(s), or hearing committee(s), had a conflict of interest or bias for or against complainant or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

All appeals require that both parties are notified in writing when an appeal is filed and given a reasonable opportunity to submit a written statement in support of or challenging the decision.

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