

SECTION 1 Introduction

PART 6 Title IX

Section I - Part VI

Montcalm Community College is committed to maintaining an education and work environment that is free from sexual harassment. The College does not discriminate on the basis of sex in its education programs or activities. Pursuant to its obligations under Title IX of the Education Amendments Act of 1972, and its implementing regulations, the College is committed to eliminating sex-based harassment and will take appropriate action when an individual is determined responsible for violating this policy.

This policy applies to student and employee complaints alleging sex-based harassment that is a violation of Title IX and its implementing regulations. All administrators, faculty, staff, and all other College employees share responsibility for avoiding, discouraging, and reporting acts of sex-based harassment as a matter of their employment. All members of the College community are further encouraged to avoid, discourage and report violations of this policy of which they may become aware. Note that a person is entitled to make a complaint of sex-based harassment only if they themselves are alleged to have been subjected to the sex-based harassment, if they have a legal right to act on behalf of such

Sex-based harassment means conduct on the basis of sex that satisfies one or more of the following:

- (1) A College employee or any other individual, conditioning the provision of an aid, benefit, or service of the College on an individual's participation in unwelcome sexual conduct (often called "*quid pro quo*" harassment);
- (2) Unwelcome conduct determined by a reasonable person to be so severe, or pervasive, and objectively offensive that it effectively denies a person equal access to the College's education program or activity (often call "hostile environment" harassment); or
- (3) "Sexual assault" as defined in the Clery Act (20 U.S.C. 1092), or "dating violence," "domestic violence," or "stalking" as defined in the Violence Against Women's Act (34 U.S.C. 12291).

A. "Sexual assault" means any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent. Sexual assault includes rape, fondling, incest, and statutory rape.

1. Rape is 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.
2. Fondling is 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 age or because of his/her temporary or permanent mental

- C. "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 victim. The existence of such a relationship shall be determined based on consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the person involved in the relationship.

- D. "Stalking" means engaging in a course of conduct directed at a specific person that would cause a reasonable person to – (1) fear for the person's safety or the safety of others; or (2) suffer substantial emotional distress.

Sex discrimination includes but is not limited to sex-based harassment. Sex discrimination includes discrimination on the basis of: Sex stereotypes, sex characteristics, sexual orientation, gender identity, pregnancy or related conditions.

Complainant means an individual who is alleged to be the victim of conduct that could constitute sex-based harassment.

Consent is a clear, freely given, verbalized "yes" to sexual activity. The absence of "no" is not consent. Silence, in and of itself, cannot be interpreted as consent. Furthermore, a verbalized "yes" which has been coerced, does not constitute a free

Supportive measures mean non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent 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 recipient's educational environment, or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions of contact between the parties, changes in work locations, classes, or housing, leaves of absence, increased security and monitoring of certain areas of the campus (including school buildings and facilities), and other similar measures (e.g., instituting changes to extracurricular activities, transportation, to allow the complainant and respondent to avoid contact; informing the complainant of other available resources, such as legal assistance and victim advocacy).

Education program or activity includes locations, events, and circumstances over which the College exercises substantial control over both the respondent and the context in which the sexual harassment occurs.

Eligible student means a student is attending, or attempting to attend, an institution of postsecondary education.

Montcalm Community College designates and authorizes the following individual to coordinate its efforts to comply with the College's responsibilities under Title IX and its implementing regulations:

, Sr. Vice President for Administrative Services 989-328-1249. Connies@montcalm.edu 2800 College Drive, Sidney, MI 48885.

The College shall notify applicants for employment, students, and employees with the College of the following information:

Montcalm Community College does not discriminate on the basis of sex in its education program or activity and is required by Title IX and its implementing regulations not to discriminate in such a manner. This requirement not to discriminate in its education program or activity extends to admission and employment. The College's Title IX Coordinator is:

, Vice President for Administrative Services 989-328-1249. Connies@montcalm.edu 2800 College Drive, Sidney, MI 48885

Any inquiries about the application of Title IX and its implementing regulations to the College may be referred to the College's Title IX Coordinator, the Assistant Secretary for the U.S. Department of Education's Office for Civil Rights, or both.

The College has adopted grievance procedures that provide for the prompt and equitable resolution of complaints made by students, employees, or other individuals participating or attempting to participate in its education program or activity or by the Title IX Coordinator, alleging any action that would be prohibited by Title IX and/or its implementing regulations. The grievance procedures are included in the Montcalm Community College Title IX Policy, which is available at: Title XI Policy. The grievance procedures and grievance process specifically address how to report or file a complaint of sex-based discrimination, how to report or file a formal complaint of sexual harassment, and how the College will respond.

The College will prominently display the Title IX Coordinator's contact information (i.e., Name and/or, Title, Phone Number, Office Address, and Email Address). This Policy is on the College's website and the College makes it available to applicants for employment, students and employees.

A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, or by filling out a complaint form on the college's website. Reports are also received through the College's incident report systems and through the Anonymous Tip Line. The Title IX Coordinator is authorized to file a formal complaint in lieu of the complainant's stated desire in the event of the College assessment of the threat of ongoing risk posed to the college.

When the College receives a formal complaint, the College will follow its Grievance Process, as set forth herein. Specifically, the College will undertake an objective evaluation of all relevant evidence – including both inculpatory and exculpatory – and provide that credibility determinations will not be based on a person's status as a complainant, respondent, or witness.

The College will take reasonable steps to protect the privacy of the parties and witnesses during its grievance procedures. These steps will not restrict the ability of the parties to obtain and present evidence, including by speaking to witnesses; consult with their family members, confidential resources, or advisors; or otherwise prepare for or participate in the grievance procedures. The parties cannot engage in retaliation, including against witnesses

When a report of sexual harassment is made, the Title IX Coordinator, or their designee, shall promptly contact the complainant (including his/her parent/guardian if the complainant is under 18 years of age or under guardianship) to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures. Any supportive measures provided to the complainant or respondent shall be maintained as confidential, to the extent that maintaining such confidentiality will not impair the ability of the College to provide the supportive measures. In the event that the complainant is unable to file a formal complaint, the Title IX Coordinator is authorized in that instance to file the formal complaint on their behalf. However, if the complainant is unwilling to be named, preferring to remain anonymous, a formal Title IX investigation may not be as effective.

When a party is both a student and an employee of the College, the Title IX Coordinator will make a fact-specific inquiry to determine whether the requirements set forth in the Grievance Process apply. In making this determination, the College will consider whether the party's primary relationship with the College is to receive an education and whether the alleged sex-based harassment occurred while the party was performing employment-related work.

Emergency Removal: The College may remove a respondent from its education program or activity on an emergency basis after conducting an individualized safety and risk analysis. The purposes of the individualized safety and risk analysis is to determine whether the respondent poses an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment that justifies removal. If the College determines the respondent poses such a threat, it will so notify the respondent and complainant, and the respondent will have an opportunity to provide a written challenge of the decision to the Dean of Student and Enrollment Services within two (2) business days following notification of the removal.

The Dean of Student and Enrollment Services or his/her designee shall determine whether emergency removal is warranted within five (5) calendar days of receiving the challenge. If the respondent is a non-student employee, the College may place the respondent on administrative leave during the pendency of the grievance process.

Under no circumstances shall a complainant be required as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, to waive his/her right to an investigation and adjudication of a formal complaint of sexual harassment. Similarly, no party shall be required to participate in an informal resolution process. However, if a formal complaint is filed alleging activity that falls under this policy, the Title IX Coordinator may offer to the parties an informal resolution process. If the parties mutually agree to participate in the

informal resolution process, the Title IX Coordinator shall designate a trained individual to facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication. The informal resolution process may be used at any time prior to the decision-maker(s) reaching a determination regarding responsibility.

If the Title IX Coordinator proposes an informal resolution process, the Title IX Coordinator shall provide to the parties a written notice disclosing:

- (1) the allegations;
- (2) the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations; and
- (3) any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

Any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint.

Before commencing the informal resolution process, the Title IX Coordinator shall obtain from the parties their voluntary, written consent to the informal resolution process. The informal resolution process is not available to resolve allegations that an employee sexually harassed a student.

The College will seek to conclude the grievance process, including resolving any appeals, within 60 days of receipt of the formal complaint. If the Title IX Coordinator offers informal resolution processes, the informal resolution processes may not be used by the complainant or respondent to unduly delay the investigation and determination of responsibility. This timeframe, however, may be impacted by the complexity and severity of the matter, and may be subject to a temporary delay of the grievance process or a limited extension for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a party, a party's adviser, or a witness; concurrent law enforcement activity; the need for language assistance or accommodation of disabilities; and school breaks. The Title IX Coordinator will provide the parties with updates on the status of the grievance process.

The respondent is presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

Upon receipt of a formal complaint, the Title IX Coordinator will provide written notice of the following to the parties who are known with sufficient time for the parties to prepare a response before any initial interview:

- (1) Notice of the C hc a

- a. inform the parties that Montcalm Community College will use preponderance of the evidence (more likely than not) as the standard of evidence for the Title IX grievance process.
- b. include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility will be made at the conclusion of the grievance process;
- c. inform the parties that the college will assign them an adviser, or they may have an adviser of their choice, who may be, but is not required to be, an attorney;
- d. inform the parties that they may inspect and review evidence; and
- e. inform the parties of any provision in the College's Code of Conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.
- f. inform the parties that Montcalm Community College Title IX investigations will be conducted free from bias and include access to the training materials used to train the Title IX internal team.
- g. inform the parties that retaliation is prohibited.
- h. inform the parties that they are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence or an accurate description of this evidence. If the College provides a description of the evidence: The parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence upon the request of any party.

The preceding notice shall be provided within five (5) business days, or as soon as possible, of the Title IX Coordinator's receipt of the formal complaint of sexual harassment.

If, in the course of an investigation, the Title IX Coordinator decides to investigate allegations about the complainant or respondent that are not included in the original notice provided to the parties, the College will provide notice of the additional a

process involves more than one complainant or more than one respondent, references in this policy to the singular "party," "complainant," or "respondent" include the plural, as applicable.

In conducting the investigation of a formal complaint and throughout the grievance process, the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility is on the College, not the parties.

In making the determination of responsibility, the decision-maker(s) is (are) directed to use the preponderance of evidence standard.

Pursuant to law, the College is not permitted to access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the profe

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not permissible, regardless of whether they are relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

Live hearings pursuant to this section may be conducted with all parties physically present in the same geographic location or, at the Title IX Coordinator's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.

The College will create an audio or audiovisual recording, or transcript, of any live hearing612 792 q0.00000912 0 612 792 r21.(g)

The decision-maker(s) for the appeal shall issue a written decision describing the result of the appeal and the rationale for the result. The written decision will be provided to the Title IX Coordinator who will provide it simultaneously to both parties. The written decision will be issued within ten (10) calendar workdays of when the parties' written statements were submitted. This appeal process applies solely to a formal Title IX investigation and any other similar processes do not apply.

Neither the College nor any other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, its implementing regulations, or this policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy. Intimidation, threats, coercion, or discrimination, including charges agai

(1) Each Title IX investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript that is made of any live hearing, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the College education program or activity;

(2) Any appeal and the result therefrom;

(3) Any informal resolution and the result therefrom; and

(4) All materials used to train Title IX Coordinators, investigators, decision makers, and any person who facilitates an informal resolution process.

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