

POLICIES AND BYLAWS

BOARD OF TRUSTEES

Fulton-Montgomery Community College



May 2025

This policy manual contains policies and bylaws passed by the Board of Trustees of Fulton-Montgomery Community College. Also contained in this manual are administrative procedures. Each page bears the month, date, and year of adoption and/or revision of the policy or procedure. Copies of this manual have been distributed to Trustees. Additionally, this Policy Manual is posted on the College Website. As policies and procedures are adopted or revised, the College Website will be kept up to date.

POLICIES AND BYLAWS

BOARD OF TRUSTEES Fulton-Montgomery Community College

<u>AREA</u>	<u>ARTICLE</u>	<u>SERIES</u>
BYLAWS OF THE BOARD	I	1000
ADMINISTRATION	II	2000
STUDENTS	III	3000
PERSONNEL	IV	4000
INSTRUCTION	V	5000
COMMUNITY SERVICE	VI	6000
FINANCE	VII	7000
PHYSICAL PLANT	VIII	8000

ARTICLE I

SERIES 1000

BYLAWS

POLICY

POLICY NUMBER

Bylaws of the Board of Trustees

1000

BYLAWS OF THE BOARD OF TRUSTEES

1100 Legal Status

1110 Official Name of College

1120 Corporate Title

1130 Legal Basis

1140 College Seal

1150 Official Sponsors

1160 Accreditation

1170 Service Area

1200 Purpose of the Institution

1210 Vision

1220 Mission

1230 Core Values

1240 Civility Statement

1300 Organization of the Board

1310 Composition of the Board

1315 Independent Director

1320 Vacancies

1330 Entire Board

1400 Responsibilities, Powers, and Duties of the Board

1410 Authority of the Board

1420 Responsibilities and Duties of the Board

1430 Residual Powers of the Board of Trustees

1500 Real Property

1510 Title

1520 Deed

1600 Meetings of the Boards of Trustees

1610 Place of Meetings

1620 Notice of Meetings

1630 Regular Meetings

1640 Annual Meetings

1650 Special Meetings

1660 Quorum

1670 Presence of Trustees at Meetings

1680 Public Comment

1690 Use of Videoconferencing for Extraordinary Circumstances

1700 Rules Governing Board meetings

1710 Order of Business

1720 Minutes of the Meeting

1730 Operating Procedure

1740 Ethics

1750 Confidentiality

1800 Officers and Committees of the Board

1810 Officers of the Board

1811 The Chair and the Vice Chair

1812 Election of Officers of the Board

1813 Term of Office

1814 Resignations

1815 Filling of Office Vacancies

1820 Committees

1900 General Provisions

1910 Principal Office

1911 Other Offices

1920 Fiscal Provisions

1921 Fiscal Year

1922 Bank Depository

1923 Checks

1930 Books and Records

1940 Compensation of Trustees

1950 Bylaw Limitation

1960 Self-Evaluation

1970 Amendments to Bylaws

1100 Legal Status

1110 Official Name of College

The name of the College is Fulton-Montgomery Community College, as adopted by the Board of Trustees in November of 1963.

1120 Corporate Title

The Corporate Title of the governing board of Fulton-Montgomery Community College shall be "Board of Trustees of Fulton-Montgomery Community College".

1130 Legal Basis

Fulton-Montgomery Community College is administered by the Board of Trustees pursuant to Article 126 §6306 of the New York State Education Law Volume 8, Part 600 of the Official Compilation of Codes, Rules and Regulations of the State of New York (8NYCRR).

1140 College Seal

The College shall have a seal, with the name of the College inscribed on it, adopted by the Board of Trustees and held in custody by the secretary of the Board.

1150 Official Sponsors

Fulton-Montgomery Community College is sponsored by Fulton and Montgomery counties and was founded on March 21, 1963 as a part of the State University of New York system.

1160 Accreditation

Fulton-Montgomery Community College is accredited by the Middle States Association of Colleges and Secondary Schools Commission on Higher Education.

1170 Service Area

Fulton-Montgomery Community College's primary service area includes the counties of Fulton, Montgomery, and Hamilton and part of Saratoga.

1200 Purpose of the Institution

1210 Vision

Fulton-Montgomery Community College strives to be recognized as a model community college that offers quality education, excellence in student support, innovative approaches, and programs that reflect our values.

1220 Mission

Fulton-Montgomery Community College is the region's partner for quality, accessible higher education; responsive programs; economic development; and cultural and intellectual enrichment.

1230 Core Values

Fulton-Montgomery Community College has identified the following as core values in its approach to serving students and the community.

- Excellence in education and teaching
- Student learning and scholarship
- Innovation
- Civility and integrity
- Caring personalized service
- Diversity
- Accessibility
- Quality environment
- Community engagement

1240 Civility Statement

FM is committed to fostering an environment of civility. All members of the FM community and visitors have the right to experience and the responsibility to create and maintain an environment of mutual respect and support that is civil in all aspects of human relations. Civility facilitates professional growth and achievement and promotes an environment where each person can reach his or her full potential.

1300 Organization of the Board

1310 Composition of the Board

The Board of Trustees consists of ten members appointed in conformance with the provisions of Article 126 §6306 of the New York State Education Law. Four members are appointed by the Governor to serve seven-year terms; five are to be appointed by the sponsoring counties to serve seven-year terms, and one student with voting rights to be elected by the Fulton-Montgomery Community College student body to serve a one- year term.

1315 Independent Director

An “Independent Director” means a Director or Trustee who:

- a. Is not, and has not been within the last (3) years, an employee of the College, or an affiliate of the College and does not have a relative who is, or has been within the last (3) years a Key Employee of the College or any other affiliate;
- b. has not received, and does not have a relative who has received, in any of the last (3) years, more than \$10,000.00 in direct compensation from the College or an affiliate of the College (other than reimbursement for expenses reasonably incurred as a Director or Trustee or reasonable compensation for service as a Director or Trustee, if permitted by statute or regulation; and
- c. is not a current employee of or does not have a substantial financial interest in, and does not have a relative who is a current Officer of or has a substantial financial interest in any entity that has made ‘payment’ to or received ‘payments’ from the College or an affiliate of the College for property or services in an amount which, in any of the last (3) fiscal years, exceeds the lesser of \$25,000.00 or 2% of such entity’s consolidated gross revenue. For

purposes of this definition the term ‘payments’ does not include charitable contributions.

1320 Vacancies

Any vacancies occurring on the Board of Trustees shall be filled by the appropriate appointing authority. If the vacancy occurs prior to the expiration of any term, the new Board member shall be appointed (or in the case of the student trustee, elected) only for the remainder of the term, or to serve only until subsequent action by the appropriate appointing authority.

1330 Entire Board

If these By-laws, as amended or due to other circumstances, provide for a range between minimum and maximum number of director, the “entire board” consists of the number of directors elected as of the most recently held election of directors.

1400 Responsibilities, Powers, and Duties of the Board

1410 Authority of the Board

The authority of the Board of Trustees of Fulton-Montgomery Community College is derived from Article 126 §6306 of the New York State Education Law and Section 604.2, Volume 8 of the Official Compilation of Codes, Rules, and Regulations of the State of New York (8NYCRR).

1420 Responsibilities and Duties of the Board

The college trustees, subject to the approval of State University trustees, shall appoint a president, approve curriculum, approve budgets, establish tuition and fees, and approve facilities. The college trustees shall provide for the awarding of certificates and degrees certification of student transcripts. In addition, the college trustees, upon the recommendation of the president, shall adopt salary schedules and approve the organizational structure of the College, including shared governance of the College

The College Trustees shall formulate and record the policies and procedures of appointment and conditions of employment of the president and other professional administrative personnel not holding academic continuing appointments of tenure. The College Trustees shall establish policies and delegate to the professional administrative staff responsibility for the following:

- (a) personnel policies, including the following:
 - 1. appointments, promotions and dismissals of faculty members;
 - 2. conditions of employment, leaves of absence and sabbatical leave;
 - 3. rules and regulations to which faculty are expected to adhere;
 - 4. statements regarding academic freedom; and
 - 5. subject to the local and State civil service regulations, the working conditions for non-academic personnel and fixed rates of compensation.
- (b) creation of divisions, departments, and appropriate administrative and academic positions and definitions of duties to carry out the objectives of the College;
- (c) regulations governing the behavior and conduct of students and guiding the co-curricular program of the College;

- (d) authorization and supervision of travel for the purposes of the College;
- (e) care, custody, control and management of land, grounds, buildings, equipment and supplies used for the purposes of the College for carrying out its objectives;
- (f) use of College facilities by outside organizations;
- (g) admission of students;
- (h) preparation of a budget for operation of the college for submission to and approval by the local sponsor and the State University Trustees;
- (i) preparation of capital equipment and capital construction budgets;
- (j) use of College facilities for research, consultation or other contractual services pursuant to the educational purposes of the College, in accordance with regulations of the College Trustees and upon reimbursement to the college on a fair and equitable basis for the use of facilities or equipment; and
- (k) make available for inspection all College policies and procedures for the convenience and information of members of the College constituency.
- (l) other administrative duties as required by law, policy, etc.

1430 Residual Powers of the Board of Trustees

In accordance with Education Law, the Fulton-Montgomery Community College Board of Trustees has such other powers and performs such other duties as may be provided by law or prescribed by the State University of New York Trustees..

1500 Real Property

1510 Title

The title to the real property of the College is vested with the sponsoring counties, and the real property, in accordance with Education Law, is held in trust for the College by resolution of the Fulton County Board of Supervisors and the Montgomery County Legislature. The resolution, which was passed by both sponsoring counties, described the parcel of land and the boundaries.

1520 Deed

The deed for the College land, which places the property in trust for the College, was filed and recorded in the County Clerk's offices of Fulton and Montgomery Counties.

1600 Meetings of the Board of Trustees

1610 Place of Meetings

All meetings of the Board shall be held at such places within the counties of Fulton and/or Montgomery of the State of New York as shall from time to time be stated in the Notice of the Meeting, or stated in a duly executed waiver of notice. If the place of meeting is not specified, the meeting shall then be held at the principal office of the College. Any meeting may be held elsewhere than above specified, provided there is unanimous consent of all Trustees.

1620 Notice of Meetings

a. Written Notice

Written notice of each meeting of the Board shall be given to Trustees entitled to vote.

Notices shall state the place, dates and hours of the meeting and, unless it is an annual meeting or convention, shall also indicate that it is being issued by or at the direction of the person or persons calling the meeting. Notice of a Special Meeting shall also state the purpose or purposes for which it is being called. A copy of the notice of any meeting shall be given to all board members eligible to vote personally; by first class mail; electronic mail; or by facsimile.

b. Notice by Mail

If mailed, such notice is given when deposited in the United States mail, with postage thereon pre-paid, directed to the Trustee at the Trustee's address as it appears on the record of Trustees or if the Trustee has filed with the Secretary a written request that notices to the Trustee be mailed to some other address, then directed to the Trustee at such other address.

c. Waiver of Notice

Notice of meetings of the Membership need not be given to any Member entitled to vote who submits a signed waiver of notice, whether before or after the meeting. The attendance of any Member entitled to vote at a meeting without protesting prior to the conclusion of the meeting the lack of notice of such meeting, shall constitute a waiver of notice by the Member.

1630 Regular Meetings

Regular Meetings of the Board shall be held, with notice, on the third Thursday of each month.

1640 Annual Meetings

The Annual Meeting for the election of officers of the Board shall be held during July of each year, with notice, at such time as shall be determined by resolution of the Board.

1650 Special Meetings

Special Meetings of the Board may be called by the Board, or by the Chair, on at least one day's notice to each Trustee. Special Meetings shall be called by the Chair or Secretary in a like manner, on the written request of any two Trustees. In calling a Special Meeting, the Chair shall give due consideration to the request of any Trustee concerning the time and place of any such meeting.

Except when emergencies occurring closer to the time of the meeting require immediate Board action, Trustees shall receive advance information about matters requiring their action.

From time to time, college personnel will be called to attend Board meetings to present information about matters under discussion by the Trustees.

1660 Quorum

At all meetings of the Board, the presence of at least six (6) voting members shall be necessary to constitute a quorum sufficient for the transaction of business. At any meeting at which there is a quorum, any act of the Board of Trustees shall require six

(6) affirmative votes. If a quorum is not present at any meeting of Trustees, those Trustees present may adjourn the meeting, without notice other than announcement at the meeting, until a quorum is present

1670 Presence of Trustees at Meetings

Trustees who are unable to attend any meeting are required to inform the Secretary or the Chair as early as possible. When it is indicated that a Quorum will be lacking, the Chair may cancel and re-schedule any meeting. Notice of any such re-scheduled meeting shall be communicated to each Trustee in any way the Chair may elect, provided that it furnishes at least one (1) day's notice.

1680 Public Comment

In order to encourage and facilitate input from the Campus Community and the public to the Board of Trustees, the Board will designate a period of time at the beginning of each monthly meeting for public comment limited to (5) five minutes per person. Prior to the beginning of the meeting, those wishing to address the Board are required to submit their name, group affiliation, and topic to the Secretary to the Board of Trustees. This time is not for debate, but rather to receive comments for consideration by the Trustees. The Board will not provide an immediate response to comments.

1680 Use of Videoconferencing for Extraordinary Circumstances

Chapter 56 of the laws of 2022 relating to the New York State Budget for 2022-2023 State fiscal year included an amendment to the Open Meetings Law to make permanent (until July 1, 2024) the expanded use of videoconferencing by public bodies to conduct meetings, under extraordinary circumstances.

Board of Trustee members shall be physically present at all meetings unless a member is unable to be physically present due to extraordinary circumstances which shall include:

1. Disability
2. Illness
3. Caregiving responsibilities
4. Family death
5. Lack of transportation to/from the meeting
6. Weather conditions
7. Other significant or unexpected factors or events which precludes a member's physical attendance at a meeting

Any member who participates at a physical location that is open to in-person attendance by the public (and which location has been included in the meeting notice) may count toward a quorum and may fully participate and vote in the meeting. If there is a quorum at a physical location open to the public, the Board of Trustees may properly convene a meeting. A member who is participating from a remote location that is not open to in-person physical attendance by the public may not count toward a quorum but may participate and vote if there is a quorum of members at a physical location open to the public.

If the Board of Trustees conducts the meeting allowing a member to participate from a private location under extraordinary circumstances, the public notice for the meeting must inform the public that such video conferencing will be used and must include directions for how the public can view and/or participate in such meeting.

The minutes of the meetings must include which, if any, members participated remotely.

Any member appearing by videoconference shall be on video and remain on video for the duration of the meeting unless said member has a conflict of interest with an item in the agenda and said member leaves the meeting while the topic is discussed.

Each meeting conducted using extraordinary circumstances shall be recorded and such recordings posted or linked on the College's public website within five business days following the meeting and shall remain so available for five years thereafter. Such recordings shall be transcribed upon request.

1700 Rules Governing Board Meetings

1710 Order of Business

At all meetings, except Special Meetings, the business before the Board shall normally be addressed in the order which follows; however, the Chair may change the order of business for any reason:

- I. Call to Order
- II. Minutes
- III. Public Comments
- IV. Reports
- V. Board Committees
- VI. Other Business
- VII. Adjournment

1720 Minutes of the Meeting

Minutes of regular and special meetings are public records and shall be open to inspection and shall be kept on file in the Office of the President as a permanent official record of all transactions of the Board.

The minutes shall record the name of the Trustee making a motion, second, and the vote, attributing each abstention to the individual Trustee. The voting shall be by voice, except that a roll call may be required for resolutions and all other questions whenever requested by a Trustee. A Trustee may also have the reasons for his vote recorded in the minutes if he or she so requests at the time of voting.

1730 Operating Procedure

The Board of Trustees will use **Robert's Rules of Order** as a guideline for operating procedures.

1740 Ethics

The Fulton-Montgomery Community College Board of Trustees will represent the public trust of the entire service district, a public trust of deep significance. The Board of Trustees shall:

- a) Assure the opportunity for high quality education for every student
- b) Take official actions only in public sessions
- c) Maintain confidentiality of privileged information
- d) Recognize that the strength and effectiveness of the Board is as a Board, not as a group of individuals
- e) Delegate authority to the President as the Board Executive and confine Board action to policy determination, planning, overall approval and evaluation and maintaining the fiscal stability of the College
- f) Respect the office of Trustee and in no way misuse the power inherent in the office.
- g) In September of each year, each Trustee will complete a Conflict of Interest form to remain on file at the College

1750 Confidentiality

Issues of a confidential nature arise frequently at Trustee meetings and in the Board's relations with College Administration. It is the responsibility of individual Board members to maintain a high level of confidentiality regarding all discussions and documents received by the Trustees when such discussions and documents are of a privileged nature or when such discussions and documents are exempted from the Freedom of Public Information Act.

1800 Officers and Committees of the Board

1810 Officers of the Board

The officers of the Board shall be a Chair, a Vice Chair, Treasurer, and Secretary, plus such other officers as the Board shall from time to time determine.

1811 The Chair and the Vice Chair

The Chair shall preside at all meetings of the Board; shall sign documents for the Board; and shall, from time to time, transact such business as may require attention, arising under these Bylaws and otherwise. The Chair shall appoint all committees and shall be an ex-officio member of those committees, unless resolved otherwise by the Board. The Vice Chair shall act as Chair in the absence of the Chair. The Chair and Vice Chair may vote on any questions being decided by the Board. In the absence of the Chair and Vice Chair a meeting of the Board shall be chaired by a committee Chair as selected by the Board Chairman.

1812 Election of Officers of the Board

At each Annual meeting, the Trustees shall elect from their number a Chair and a Vice

Chair. The Trustees shall also elect a Treasurer and Secretary who need not be members of the Board. At least two months prior to the annual Board meeting, the current Chair shall appoint a three-member nominating board for the purpose of developing a slate of candidates for consideration by the whole Board. The nominating committee shall make its recommended slate of candidates known to the whole Board at least one month prior to the scheduled annual meeting. At the annual meeting, after presentation of the slate of recommended officers, the chair will entertain nominations, if any, from the floor.

1813 Term of Office

The Officers of the Board shall hold offices for one year and until their successors are chosen and qualify in their stead. Any officer elected or appointed by the Board may be removed at any time by vote of the Board. Such a vote must be consistent with the provisions of Article 1.6050.

1814 Resignations

Any Officer may resign at any time by giving written notice to the Board, to the Chair, or to the President of the College. Any such resignation shall take effect at the date of the receipt of such notice, or at any later time specified therein, and shall have the effect of relieving such officer of further duties and responsibilities of office; and, unless otherwise specified, the acceptance of such resignation shall not be necessary to make it effective.

1815 Filling of Office Vacancies

If the office of any officer becomes vacant for any reason, the vacancy shall be filled by the Board; however, in the case of a vacancy in the office of President, such vacancy shall be filled only as provided under the Education Law.

1820 Committees

The Fulton-Montgomery Community College Board of Trustees will operate as a “committee of the whole” on all issues, discussions, and/or policies affecting the College. The Chair may appoint a member of the Board as a liaison to the administration for an issue or initiative or charge an ad hoc committee of the Board as needed.

1821 Special Committees – Audit & Conflict of Interest

Notwithstanding the provisions of 1.8020, the Board will establish an Audit & Conflict of Interest Committee. The Audit & Conflict of Interest Committee shall be comprised solely of members of the Board of Trustees. At least three (3) trustees shall be appointed by the President, subject to Board approval. In no circumstances is the Independent Auditor, or an employee or relative of the Independent Auditor’s firm to serve on the Committee. The Treasurer shall serve on the Committee but shall not chair the Committee.

The Audit responsibilities of the Committee shall be comprised of oversight of the accounting and financial reporting processes of the College, using an independent auditor, in preparing financial reports to governmental agencies and the Membership. The Committee shall review any and all audits of the College or any of its programs or shall respond in writing, subject to approval of the Board of Trustees, to such audits, including the management letter. The Committee will submit its audit to the Attorney General’s Office, if required.

The Conflict of Interest responsibilities of the Committee shall ensure that its trustees, officers and key employees act in the College's best interest and comply with applicable legal requirements, including but not limited to the requirements set forth in section seven hundred fifteen of the New York State not-for-profit corporation law, as amended by the Revitalization Act. The Secretary of the Board shall follow the Conflict of Interest protocols necessary to comply with the Conflict of Interest statutory requirements. The Audit and Conflict of Interest Committee shall be diligent in developing policies that safeguard the appropriate incorporation of these two functions.

1900 General Provisions

1910 Principal Office

The principal office of the College shall be located within the boundaries of Fulton and Montgomery Counties at such place as the Board shall from time to time designate.

1911 Other Offices

The College may also have offices at such other places as the Board of Trustees may from time to time determine.

1920 Fiscal Provisions

1921 Fiscal Year

The fiscal year of the College shall be in accordance with the fiscal year of the State University of New York system, September 1 through August 31 of any calendar year.

1922 Bank Depository

All funds of the College shall be deposited to the credit of the College in such banks, trust companies, or other depositories as the Board may approve or designate from time to time. All such funds shall be withdrawn only upon checks properly signed by the person or persons authorized by the Board of Trustees.

1923 Checks

All checks and demands for money and notes of the College shall be signed by such Officer or Officers, or such other person or persons, and in such manner, as the Board may designate from time to time.

1930 Books and Records

All books and records of the College shall be kept at the principal office of the College, unless otherwise specified by the Board.

1940 Compensation of Trustees

Trustees shall receive no compensation for their services but shall be reimbursed, as the Board may direct, for the expenses actually and necessarily incurred by them in the performance of their duties.

1950 Bylaw Limitation

Nothing in these Bylaws shall violate or be construed to violate any law of the State of New York or of the Counties of Fulton and Montgomery, which have jurisdiction over the College.

1960 Self-Evaluation

The Board shall conduct a self-evaluation at least every two years. The result of the evaluation may be used for board training, continuous improvement or other activities as determined by the Board.

1970 Amendments to Bylaws

These Bylaws may be amended at any meeting of the Board where a quorum is present, provided that the proposed amendment shall have been contained in the notice of the meeting.

Policy Adopted: April 1998
Policy Revised: June 2005
Policy Revised: December 2006
Policy Revised January 2015

Fulton-Montgomery Community College
Johnstown, NY

ADMINISTRATION**POLICY****POLICY NUMBER****Philosophy of Administrative Organization****2010****Records Retention and Disposition Schedule****2020****Federal and State Laws****2030****Identity Theft Protection****2040****Name Change****2050****Preferred Name****2051****Firearms****2100**

PHILOSOPHY OF ADMINISTRATIVE ORGANIZATION

- A. Fulton-Montgomery Community College shall be under the direction of the President (Chief Executive Officer) who shall operate the College in accordance with Article 126, of the New York State Education Law, and the “Official Compilation of Codes, Rules and Regulations” 8 NYCRR, Part 600, and the Policies and Bylaws of the Board of Trustees.
- B. In accordance with the Policies and Bylaws of the Board of Trustees and State law, the President shall be responsible for the organization of the College. The President shall develop and maintain a College administration whose members shall:
1. Carry out the policies of the College.
 2. Perform their duties as outlined in approved job descriptions.
 3. Perform their duties in conformance with College regulations and procedures.
 4. Perform their duties in support of the College's goals and objectives.
- C. The administration of the College shall be structured in such a way that all administrators are able to carry out their essential responsibilities, which shall be to provide effective leadership and support in the planning, implementation, and evaluation of College objectives; the creation of a stimulating environment for learning; the effective use of College resources to achieve these objectives; the recruitment, supervision, training, and evaluation of personnel; and contribution to the development and improvement of College programs and services.

In carrying out their essential responsibilities, administrators are expected to uphold the highest standards of competence and integrity, to respect individual differences, to provide for human dignity and privacy, and to be guided by the elements of due process.

RECORDS RETENTION AND DISPOSITION SCHEDULE

The College will follow the Records Retention and Disposition Schedule MI-1, issued pursuant to Article 57-A of the Arts and Cultural Affairs Law that contains legal minimum retention periods for local government records.

Only those records will be disposed of that are described in the Records Retention and Disposition Schedule MI-1 after they have met the minimum retention period prescribed therein.

Only those records will be disposed of that do not have sufficient administrative, fiscal, legal, or historical value to merit retention beyond the established time period.

FEDERAL AND STATE LAWS

It is the policy of Fulton-Montgomery Community College to comply with all relevant Federal and State laws and regulations.

Policy Adopted: December 1993
Policy Revised: July 2006

Fulton-Montgomery Community College
Johnstown, NY

IDENTITY THEFT PROTECTION

Fulton-Montgomery Community College will take reasonable steps to prevent frauds perpetrated by the misuse of identifying information. These steps will include at minimum appropriate mechanisms to ensure proper oversight, training, and updating. The President shall be responsible for developing, implementing and sustaining the procedures for an Identity Theft Prevention Program in accordance with this policy.

NAME CHANGE

While a student, faculty or staff member can request a preferred name (See the Preferred Name Policy 2051), Any student, faculty, or staff member must provide legal documentation of a change in his/her name in order to amend his/her official, system-wide record at the College. Acceptable forms of documentation include: valid driver's license, learner's permit, NYS Identification card, marriage license, divorce decree, passport, court order, or other legal document. Name change requests are processed through the Registrar's Office.

Policy Adopted: May 2010	Fulton-Montgomery Community College
Policy Revised: April 2019	Johnstown, NY

PREFERRED NAME**POLICY:**

FM recognizes that members of our community may wish to use a chosen or preferred name that is different from their legal name. For some students and employees, being addressed by a chosen or preferred name is an important part of their identity and expression. In an effort to respect and support individuals who wish to be referred to by a name other than their legal name, FM acknowledges that a chosen or preferred name can be used where possible.

PROCEDURES:

It is FM's policy to provide all members of our community with the opportunity to use a chosen or preferred name that is different from their legal name where possible. In some instances, the college is obliged to use a person's legal name and cannot use a chosen or preferred name. Such instances include (but are not limited to): employment and payroll records, health insurance records, billing records, financial aid documents, reimbursements, travel and purchasing authorizations, etc.

FM reserves the right to deny a request for or remove an existing preferred name if it is used inappropriately, including (but not limited to): for the purpose of misrepresentation, to be disruptive, or to attempt to avoid a legal obligation.

Students can request a preferred name and complete the appropriate form at the Registrar's office. Staff and faculty can request a preferred name through the Human Resource Office.

One's legal name will remain unchanged in all other FM-related systems. Students who wish to change their legal name will need official documentation of the name change and can request this through the Registrar's Office (see FM's Name Change Policy 2050).

Policy Adopted: April 2019	Fulton-Montgomery Community College
	Johnstown, NY

COPYRIGHT POLICY

Fulton-Montgomery Community College expects compliance with all applicable federal, state, and local laws governing copyrighted materials which grant authors, publishers, and creators control over the copying, distribution, transmission and performance of their original works. Fulton-Montgomery Community College recognizes the importance of the US Copyright Law of 2011 including the Technology, Education and Copyright Harmonization (TEACH) Act of 2002, the Digital Millennium Copyright Act (DMCA) of 1998 and the Higher Education Opportunity Act (HEOA) of 2008 and the College's responsibility to provide information and guidance in support of teaching and learning. This policy applies to students, staff and other non-affiliated users of campus resources.

The President will designate a Copyright Officer. The Copyright Officer will exercise general oversight of the copyright policy for the College and the Copyright Officer will assure that information and guidelines are disseminated and are otherwise available to the public.

TECHNOLOGY POLICY**Technology Policy**

Fulton-Montgomery Community College provides technology and related services, including but not limited to equipment, software, and networks for primary purpose of supporting College operations such as teaching, learning, research and administration. The use of technology and information resources is governed by all applicable College faculty, staff, and student policies as well as applicable federal, state, and local laws and statutes. Individual users who fail to adhere to appropriate policies and guidelines may be subject to suspension of computing privileges and/or other campus sanctions as determined by College Administration.

Guidelines

Users are expected to abide by the generally accepted standards of behavior and of network & social media etiquette and bear responsibility for the material they chose to access, send or display. The following guidelines are designed to assist and ensure compliance with campus use parameters. Guidelines include, but are not limited to, the following:

- Civility – The campus civility statement encourages an atmosphere of mutual respect and support. Therefore, users should:
 - Be polite and use appropriate language in communications with others.
 - Do not use the network in such a way that you would deliberately disrupt the use of the network by other users.
- Legality – Campus technology may not be used in any manner which contravenes the campus policies, laws or statutes. Therefore:
 - Illegal activities are strictly forbidden.
 - Transmission of any material in violation of any U.S. or state regulation is prohibited. This includes, but is not limited to: copyrighted material*, threatening or obscene material, or material protected by trade secret.
 - Use for product advertisement personal or political lobbying is also prohibited. The President of the College and the Chief Advancement Officer are permitted to lobby on behalf of the College utilizing College resources.
- Privacy – All users should respect the privacy of others using campus resources & technology. Therefore:
 - Do not reveal your own or anyone else's personal information when using online or networked resources.

- Electronic communications are not guaranteed to be private. Please remember that all college computer systems, network and resources are the responsibility of the IT Department and therefore can be accessed by IT personnel as needed and according to campus policy and procedures.
- Campus credentials - i.e. username, password, access tokens, access cards or similar methods used to access campus computer resources - are unique for each individual and should be treated as private and non-transferable.

Specifically, the following restrictions apply and users may not:

- Obstruct other people's work by consuming unnecessarily large amounts of system resources or by deliberately crashing any computer system or make any attempt to cause degradation of system performance.
- Make any attempt to damage computer equipment or software.
- Make any attempt to alter software configurations without proper authorization.
- Make any attempt to violate the security of the campus computer systems.
- Use any campus workstation for any illegal or criminal purpose.
- Violate copyright laws* or software licensing agreements in their use of campus technology.
- Copy, store, post, distribute, install or execute any unauthorized software on campus technology resources in violation of copyright or other US laws.
- Share their campus credentials or utilize another's.
- Use college technology for commercial, business purposes or personal profit without authorization from the college for such use.

Violations of any of the above may result in loss of access or other campus sanctions. Unlawful activities will be dealt with in a serious and appropriate manner.

** U.S. copyright law (Title 17, U.S. Code) prohibits the unauthorized reproduction or distribution of copyrighted materials, except as permitted by the principles of "fair use". Users may not copy or distribute electronic materials (including electronic mail, text, images, programs or data) without the explicit permission of the copyright holder. Any responsibility for any consequences of copyright infringement lies with the user; the campus expressly disclaims any liability or responsibility resulting from such use.*

Information Security Policy

Fulton-Montgomery Community College recognizes the importance of protecting the College's information assets. As an institution of higher education operating in New York State, the College must comply with federal and state confidentiality and information safeguarding laws, as well as meet data protection requirements imposed by its accrediting agency, the Middle States Commission on Higher Education ("MSCHE").

The President will designate an Information Security Officer (ISO). The ISO will exercise general oversight of the information security policy for the College and the ISO will assure that information and guidelines are disseminated and are otherwise available to the public.

This policy applies to students, staff, vendors, contractors and other non-affiliated users of campus resources.

FIREARM POLICY

In compliance with New York State law persons may not carry or use a firearm on the Fulton-Montgomery Community College campus or any property owned, managed, or controlled by the College regardless of whether or not the individual has a valid permit to carry the firearm. Law enforcement professionals including federal, state, and local police, peace officers and other law enforcement officers authorized to possess firearms, pursuant to their profession, while on-duty or off-duty, are granted permission to carry their official firearm, or other weapon as required by their employment, while in or upon any building or grounds of Fulton-Montgomery Community College in order to respond or react to an emergency while present on the campus or within the facilities.

Policy Adopted: July 2013

Fulton-Montgomery Community College
Johnstown, New York

STUDENTS**POLICY****POLICY NUMBER**

Immunization	3020
Athletics	3030
Student Discipline	3040
FERPA	3050
Title IX Non-Discrimination/Anti-Harassment	3051
Religious Beliefs	3052
Student Accommodations Based on a Disability	3053
Student Identification Cards	3054
Admissions	3060
Student Activities, Clubs, Organizations	3070
Student Freedom of Expression & Assembly	3075
Student Financial Assistance	3080
Student Responsibility for Debts	3090
Academic Advising	3100
Student Housing	3300
Student Use of Drugs and Alcohol	3400

IMMUNIZATION

Fulton-Montgomery Community College, a Community College of the State University of New York, will operate in accordance with all public health laws including 2165 and 2167. In accordance with Public Health Law 2165, all students enrolled in at least six (6) credit hours must document proof of immunity of measles, mumps, and rubella. Proof of immunity requires one of the following:

1. written proof of two MMR (measles, mumps, rubella) or rubeola vaccinations, at least one of which must have been given after 12/31/1967
or
2. a blood test showing immunity
or
3. date of birth prior to 1957.

Students are required to submit proof of immunity to the Registrar's Office for verification prior to registering for classes. Students who do not provide proof of immunity will not be permitted to live in any Fulton-Montgomery Community College residence hall or attend classes on campus.

In accordance with Public Health Law 2167, Fulton-Montgomery Community College is required to distribute information about meningococcal disease and vaccination to all students meeting the enrollment criteria, whether they live on or off campus.

Procedure

Students enrolled in at least six (6) credit hours or the equivalent per semester must provide a response to receipt of meningococcal disease and vaccine information must be signed by the student or student's parent or guardian. This must include information on the availability and cost of meningococcal meningitis vaccine (Menactra);

Information on suspected and/or confirmed cases of disease must be immediately reported to the Vice President for Student Affairs who will then report to the Montgomery and Fulton County Public Health Offices.

Students not complying with this law will be withdrawn from all classes thirty (30) calendar days after the commencement of classes in any given semester.

Immunization records will be stored as part of each student file in the Registrar's office.

ATHLETICS

Fulton-Montgomery Community College, a Community College of the State University of New York, is a member of the National Junior College Athletic Association (NJCAA), Region III, Mountain Valley Conference. Division III intercollegiate athletics are provided through the joint cooperation of the College and the Student Government Association. The College will comply with all rules and regulations set forth by the National Junior College Athletic Association (NJCAA).

Policy Adopted: January 1994
Policy Reviewed: July 2006
Policy Revised: August 2012

Fulton-Montgomery Community College
Johnstown, New York

STUDENT DISCIPLINE

Fulton-Montgomery Community College, a Community College of the State University of New York, has the right and authority to protect its educational purpose through the setting of standards of student conduct. The College will treat students fairly and equally within the Standards of Student Conduct.

The College has established a Standards of Student Conduct, which includes the investigation process, and the disciplinary appeals process. This document is housed in the Student Handbook, The Source, which is published annually and distributed to new students at the onset of the new academic year.

For crimes of violence, including, but not limited to sexual violence, defined as crimes that meet the reporting requirements pursuant to the federal Clery Act, Fulton-Montgomery Community College will make a notation on the transcript of students found responsible after a conduct process that they were “suspended after a finding of responsibility for a code of conduct violation” or “expelled after a finding of responsibility for a code of conduct violation.” For the respondent who withdraws from the institution while such conduct charges are pending, and declines to complete the disciplinary process, the College will make a notation on the transcript of such students that they “withdrew with conduct charges pending.”

A notation is placed on transcripts of students when two factors are met:

- The student is found responsible, after a process (or takes responsibility) for a code of conduct violation that is equivalent to the definitions for Clery Act Part I Primary Crimes; and
- The student is expelled, suspended, and/or withdraws with conduct charges pending.

All students who take responsibility or are found responsible after a code of conduct process for a code of conduct violation whose definition is equivalent to a Clery Part I Primary Crime, or who withdraw with conduct charges pending, will have such a notation on their transcript regardless of where or when the violation occurred. The notation will be applied for violations that occur on campus, off campus, or while studying abroad.

Consistent with the law, notations will appear on the actual transcript and not on a separate, detachable sheet. Notations will only be removed if a court of competent jurisdiction vacates a finding of responsibility for a violation of college policy.

Violations equivalent to crimes of violence, as defined in the Clery Act (as updated by the Violence Against Women Act Final Regulations) Part I crimes, as set forth in 34 C.F.R. §668.46(c), that require a transcript notation under §6444(6) are: murder; manslaughter; rape,

fondling, incest and statutory rape; robbery; aggravated assault; burglary; motor vehicle theft; and arson.

Policy Adopted: January 1994
Policy Reviewed: July 2006
Policy Revised: August 2012
July 2017

Fulton-Montgomery Community College
Johnstown, New York

FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA)

Fulton–Montgomery Community College complies with requirements of the federal Family Educational Rights and Privacy Act (FERPA) of 1974 concerning access to and confidentiality of students' educational and related records.

The College accords all the rights under this law to all students regardless of age. Exceptions to this application in specific cases are those students who it can be documented are considered dependents as defined in section 152 of the Federal Internal Revenue Code of 1986. In these instances the individual who declares them as dependent with the IRS may have access to specific educational information.

In general no one shall have access to nor will the institution disclose any information from current or past students' educational records without the written consent of the students except:

1. To personnel within the College
2. To persons or organizations providing students financial aid
3. To accrediting agencies carrying out their accreditation function
4. To persons in compliance with a judicial order or lawfully executed subpoena
5. In connection with the Attorney General's investigation or enforcement of Federal legal requirements of federally supported education programs
6. Where disclosure of a student's educational records to the court are necessary for the institution to defend itself against or initiate legal action against a parent or student, records may be disclosed without a court order
7. To persons in an emergency when a College official (senior administrator or designee) determines it is necessary to do so to protect the health or safety of students or other persons.

All exceptions are permitted under FERPA, as is the disclosure of Directory Information, discussed later in this policy, and at the discretion of the College.

Disclosure to personnel within the College is limited to school officials with legitimate educational interests. A school official is a person employed by the College in an administrative, supervisory, academic or research, or support staff position (including alumni department staff and law enforcement unit personnel); a person or company with whom the College has contracted (such as an attorney, auditor, or collection agent); a person serving on the Board of Trustees; or a student serving on an official committee, such as a disciplinary or grievance committee, or assisting another school official in performing his or her tasks. A school official has a legitimate interest if the official needs to review an educational record in order to fulfill his or her professional responsibility to the College.

The College, at its discretion, may provide Directory Information in accordance with provisions of FERPA, to include: name, local and permanent address, telephone numbers, electronic mail address, photographs, dates of attendance, enrollment status (full-time/part-time), previous institutions attended, major field of study, academic level (year in school), degrees and awards received and dates awarded, participation in officially recognized activities/sports, physical factors (height and weight) of athletic team members, date and place of birth. Students currently enrolled can object to the release of certain categories of information by notifying in writing the Registrar's Office at the College within fourteen (14) days following the first day of class. The failure of any student to specifically object to the release of certain information or categories of information within the time indicated will be interpreted as approval. Requests for non-disclosure will be honored by the College for only one academic year. Authorization to withhold Directory Information must be filed annually with the Registrar's Office.

FERPA provides students with the right to inspect and review information contained in their educational records, to challenge the contents of their educational records, to have a hearing if the outcome of the challenge is unsatisfactory, and to submit explanatory statements for inclusion in their files if they feel the decision of the hearing is unacceptable. The initial request to review records should be directed to the office or department where the record is housed. Official academic records are considered those held in the Registrar's Office. Other departments that maintain students records include but are not limited to: the Financial Aid Office, the Admissions Office, the Student Development Center, college administered programs that provide academic services and personal support to special populations of students, and the Office of the Vice President for Student Affairs (discipline matters). Records are maintained and kept in accordance with the provisions of New York State's document "Records Retention and Disposition Schedule MI-1, Section 185.14, 8NYCRR (Appendix K)".

The College may require written requests at its discretion to review certain records, in which case the College will respond in writing to such requests within thirty (30) days. Students may have copies made of their records with the exception of official academic records for which there has been placed a "hold" for financial or disciplinary reasons. These copies will be made at the student's expense at the prevailing rate listed in the annual fee schedule. Educational records DO NOT include: records of instructional, administrative or professional support personnel which are the sole possession of the maker and are not accessible to others; records related to law enforcement and security; employment records; health records, the last being made available upon the written request to the student's physician.

As specified in FERPA students may NOT inspect and review: financial information supplied by their parents/legal guardian; confidential letters of recommendations associated with admission to a program, transfer or employment when they have waived their right of inspection and review; records containing information about more than one student. In the last situation the College will provide only that information pertinent to the inquiring student with the following exception: The disclosure of the final results of a student disciplinary proceeding against the alleged perpetrator of a crime of violence or a non-forcible sex offense may be disclosed to the victim. The College is not required to allow inspection and review of any confidential letters or recommendations in their files prior to January 1, 1975 provided these

letters were collected under established procedures for confidentiality and were used only for the purposes for which they were collected.

The College is permitted under FERPA to disclose to a parent of a student the student's violation of any Federal, State, or local law, or of any rule or policy of the institution, governing the use of or possession of alcohol or a controlled substance, if the institution determines that the student has committed a disciplinary violation with respect to that use or possession AND the student is under 21 at the time of the disclosure to the parent.

Students who believe their educational records contain information that has been recorded inaccurately or in a way that misleads, or is otherwise in violation of their privacy or other rights may discuss their problems informally with the Registrar, in the case of the official academic records, or the appropriate Dean/Vice President in the case of other offices' files. If the decision is in agreement with the student's request, the appropriate records will be amended. If not, the student will be notified within thirty (30) days that the record will not be amended. The student will also be informed of his/her right to a formal hearing. Student requests for such a hearing must be made in writing to the Provost and Vice President for Academic Affairs within thirty (30) days of the refusal to amend the records. A hearing will be scheduled within thirty (30) days from the time the student's written request for such a hearing is received. At the hearing the student may present evidence relevant to the issues raised, and may be assisted or represented at the hearing by one or more persons of their choice, including attorneys, at the student's expense. The hearing panel will consist of the Provost and Vice President for Academic Affairs, the Vice President for Student Affairs, and one Academic Dean representing the student's academic program.

Decisions of the hearing panel will be final and will be based solely on the evidence presented at the hearing. The decision will include written statements summarizing the evidence presented as well as the statement of the decision. This document will be distributed to all parties involved in the hearing. If record amendment is required, this will be done within thirty (30) days after the hearing concludes. If the records are not to be amended, the student may place with the educational records statements commenting on the information in the records or a statement disagreeing with the decision of the hearing panel. All such statements will be placed in the record and will be maintained as a part of the record, and will be released whenever the record in question is disclosed.

The above process is limited to issues concerning accuracy in the recording and/or maintenance of student records, and to violation of student privacy rights. It does not change or supersede the remedies available to individuals addressed by the following procedures: "Appeal of Academic Regulations," "Appeal for Review of Grades," "Complaint Procedures," or the process outlined in the "Academic Integrity Policy and Procedures."

Students who believe that the adjudication of their challenges was unfair or not in keeping with the provisions of FERPA may request in writing assistance from the President of the College. Further, students who believe that their rights have been abridged can file complaints with the Family Policy Compliance Office, U.S. Department of Education, 400 Maryland Avenue, S.W.,

Washington, D.C. concerning the alleged failure of Fulton-Montgomery Community College to comply with FERPA.

Policy Adopted: November 1994
Policy Revised: July 2006, October 2012

Fulton-Montgomery Community College
Johnstown, New York



FULTON-MONTGOMERY COMMUNITY COLLEGE

www.fmcc.suny.edu

Johnstown, New York

TITLE IX POLICY PROHIBITING SEX DISCRIMINATION

A College of the State University of New York
Sponsored by the Counties of Fulton and Montgomery

TITLE IX GRIEVANCE POLICY

A. Introduction

1. What is the purpose of the Title IX Grievance Policy?

Title IX of the Educational Amendments of 1972 prohibits any person in the United States from being discriminated against on the basis of sex in seeking access to any educational program or activity receiving federal financial assistance. The U.S. Department of Education, which enforces Title IX, has long defined the meaning of Title IX's prohibition on sex discrimination broadly to include various forms of sexual harassment and sexual violence that interfere with a student's ability to equally access our educational programs and opportunities.

On May 19, 2020, the U.S. Department of Education issued a Final Rule under Title IX of the Education Amendments of 1972 that:

- Defines the meaning of "sexual harassment" (including forms of sex-based violence),
- Addresses how this FMCC must respond to reports of misconduct falling within that definition of sexual harassment, and
- Mandates a grievance process that this FMCC must follow to comply with the law in these specific covered cases before issuing a disciplinary sanction against a person accused of sexual harassment.

The full text of the Final Rule and its extensive Preamble are available here: <http://bit.ly/TitleIXReg>.

On April 29, 2024, the U.S. Department of Education issued a Final Rule under Title IX of the Education Amendments of 1972 that went into effect on August 1, 2024 (the "2024 Rule"). This 2024 Rule used an updated definition for certain conduct, such as: discrimination on the basis of sex; sex discrimination, and sex-based harassment. On August 1, 2024, FMCC adopted a new Title IX Policy in light of the Final Rule. However, on January 9, 2025, the U.S. District Court of the Eastern District of Kentucky vacated the 2024 Rule, meaning that the Title IX Regulations from 2020 are once again in effect. This Title IX Grievance Policy has been implemented in accordance with this adoption, and is in compliance with the 2020 Regulations. Accordingly, for all claims arising after August 1, 2024, including claims of sexual harassment occurring between August 1, 2024, and January 9, 2025, this policy will be applied to the investigation and resolution of such complaints.

Based on the Final Rule, Fulton Montgomery Community College ("FMCC") will implement the following Title IX Grievance Policy, effective January 9, 2025.

2. When does this Title IX Grievance Policy apply?

This policy ONLY applies where an individual files a Formal Complaint, as defined below, alleging conduct that:

- meets the definition of "Title IX Sexual Harassment" defined below;
- involves a complainant who is currently participating in, or attempting to participate in, the education programs or activities of FMCC;

- occurred after August 14, 2020;
- occurred within the United States; and
- occurred within FMCC’s “education program or activity,” as defined below.

3. How does the Title IX Grievance Policy impact other campus disciplinary policies?

In recent years, “Title IX” cases have become a short-hand for any campus disciplinary process involving sex discrimination, including those arising from sexual harassment and sexual assault. But under the Final Rule, FMCC must narrow both the geographic scope of its authority to act under Title IX and the types of “sexual harassment” that it must subject to its Title IX investigation and adjudication process. Only incidents falling within the Final Rule’s definition of sexual harassment will be investigated and, if appropriate, brought to a live hearing through the Title IX Grievance Policy defined below.

FMCC remains committed to addressing any violations of its policies, even those not meeting the narrow standards defined under the Title IX Final Rule.

Specifically, our campus has the following policies:

- a Code of Conduct that defines certain behavior as a violation of campus policy,
- a separate FMCC Policy on Sexual Misconduct Prevention and Response (the “Sexual Misconduct Policy”) that addresses the types of sex-based offenses constituting a violation of campus policy, and the procedures for investigating and adjudicating those sex-based offenses, and
- a separate Civil Rights Discrimination Complaint/Grievance Policy Procedure (the “Discrimination and Harassment Policy”) that addresses other types of conduct that are prohibited on campus as discrimination or harassment, and the procedures for investigating and adjudicating that conduct.

To the extent that alleged misconduct falls outside the Title IX Grievance Policy, or misconduct falling outside the Title IX Grievance Policy is discovered in the course of investigating covered Title IX misconduct, FMCC retains authority to investigate and adjudicate the allegations under the policies and procedures defined within the Code of Conduct, Sexual Misconduct Policy, and/or Discrimination and Harassment Policy. **Student Code of Conduct, Sexual Misconduct Policy, Civil Rights Policy.**

The elements established in the Title IX Grievance Policy under the Final Rule have no effect and are not transferable to any other policy of the College for any violation of the Code of Conduct, employment policies, or any civil rights violation except as narrowly defined in this Policy. This Policy does not set a precedent for other policies or processes of the College and may not be cited for or against any right or aspect of any other policy or process.

4. How does the Title IX Grievance Policy impact the handling of complaints?

Our existing Title IX office and reporting structure remains in place. What has changed is the way our Title IX office will handle different types of reports arising from Title IX Sexual Harassment, as detailed in full throughout Section II.

B. General Rules of Application

1. Effective Date

The Title IX Grievance Policy will become effective on August 14, 2020, and will only apply to sexual harassment alleged to have occurred on or after August 14, 2020. Incidents of sexual harassment alleged to have occurred before August 14, 2020, will be investigated and adjudicated according to the process in place at the time the incident allegedly occurred.

2. Revocation by Operation of Law

Should any portion of the Title IX Final Rule, 85 Fed. Reg. 30026 (May 19, 2020), be stayed or held invalid by a court of law, or should the Title IX Final Rule be withdrawn or modified to not require the elements of this policy, this policy, or the invalidated elements of this policy, will be deemed revoked as of the publication date of the opinion or order and for all reports after that date, as well as any elements of the process that occur after that date if a case is not complete by that date of opinion or order publication.

Should the Title IX Grievance Policy be revoked in this manner, any conduct covered under the Title IX Grievance Policy shall be investigated and adjudicated under the existing Code of Conduct, Sexual Misconduct Policy, and/or Discrimination and Harassment Policy.

3. Non-Discrimination in Application

The requirements and protections of this policy apply equally regardless of sex, sexual orientation, gender identity, gender expression, or other protected classes covered by federal or state law. All requirements and protections are equitably provided to individuals regardless of such status or status as a Complainant, Respondent, or Witness. Individuals who wish to file a complaint about FMCC's policy or process may contact the Department of Education's Office for Civil Rights using contact information available at <https://ocrcas.ed.gov/contact-ocr>.

C. Definitions

1. Title IX Sexual Harassment

For the purposes of this Title IX Grievance Policy, "Title IX sexual harassment" includes any conduct on the basis of sex that satisfies one or more of the following:

- An employee of FMCC conditioning educational benefits on participation in unwelcome sexual conduct (i.e., quid pro quo);
- Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the educational FMCC's education program or activity;
- Sexual assault (as defined in the Clery Act), which includes any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent;
- Dating violence (as defined in the Violence Against Women Act (VAWA) amendments to the Clery Act), which includes any violence committed by a person: (A) who is or has been in a

social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship; (ii) The type of relationship; (iii) The frequency of interaction between the persons involved in the relationship.

- Domestic violence (as defined in the VAWA amendments to the Clery Act), which includes any felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under New York's domestic or family violence laws or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of New York.
- Stalking (as defined in the VAWA amendments to the Clery Act), meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to-- (A) fear for their safety or the safety of others; or (B) suffer substantial emotional distress.

Note that conduct that does not meet one or more of these criteria may still be prohibited under the Code of Conduct, Discrimination and Harassment Policy, Sexual Misconduct Policy, and/or Sexual Harassment Response and Prevention Statement. Note also that conduct that constitutes sexual assault, dating violence, domestic violence, or stalking (collectively the "Sexual Misconducts"), additional requirements may apply under the Sexual Misconduct Policy.

2. Consent

For the purposes of this Title IX Grievance Policy, "consent," including "affirmative consent," means – a knowing, voluntary, and mutual decision among all participants to engage in "sexual activity" (as defined below). Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity.

Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression.

- Consent to any sexual activity or prior consensual activity between or with any party does not necessarily constitute consent to any other sexual act.
 - Whether through words or actions that clearly display consent, each party must affirmatively consent to participating in each sexual activity. Consenting to one type of sexual activity is not blanket consent to any and all types of sexual activity.
- Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
- Consent may be initially given but withdrawn at any time.
- Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, being under the age of consent, or if an individual otherwise cannot consent.
 - Minors who cannot consent under New York's laws covering age of consent are considered incapacitated. Under New York law, the age of consent is 17 years old. Students and employees are encouraged to review New York State Penal Law Article 130 for additional details regarding New York's age of consent.

- Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent. This does not mean that individuals cannot affirmatively consent to sexual activity or contact when they have been drinking or using drugs, however. Such individuals may still affirmatively consent through words or actions that clearly indicate interest in engaging in the activity.
- Incapacitation is to be determined by an investigation process based on available evidence, acknowledging that in almost no cases will scientific evidence of alcohol or drug level (such as a breathalyzer taken at the time of the assault) be available. There is no single standard or number of drinks that leads to incapacitation. This level varies for different people, and may depend in part on their age, gender, height, weight, metabolism and whether and how much they have recently eaten.
- Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.
- When consent is withdrawn or can no longer be given, sexual activity must stop.
 - Consent can “no longer be given” when a party to a sexual act or sexual contact initially consents to the activity, but during the course of the activity falls asleep or otherwise becomes unconscious or incapacitated. At that point, the other party must stop the sexual activity or contact.

3. Education Program or Activity

For the purposes of this Title IX Grievance Policy, FMCC’s “education program or activity” includes:

- Any on-campus premises.
- Any off-campus premises that FMCC has substantial control over. This includes buildings or property owned or controlled by a recognized student organization.
- Activity occurring within computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of FMCC’s programs and activities over which the FMCC has substantial control.

4. Formal Complaint

For the purposes of this Title IX Grievance Policy, “Formal Complaint” means a document – including an electronic submission - filed by a complainant with a physical or digital signature or other indication that the complainant is the person filing the Formal Complaint, or signed by the Title IX Coordinator, alleging Title IX Sexual Harassment against a respondent about conduct within FMCC’s education program or activity and requesting initiation of the procedures consistent with the Title IX Grievance Policy to investigate the allegation of Title IX Sexual Harassment.

5. Complainant

For the purposes of this Title IX Grievance Policy, Complainant means any individual who has reported being or is alleged to be the victim of conduct that could constitute Title IX Sexual Harassment as defined under this policy.

6. Relevant evidence and questions

“Relevant” evidence and questions refer to any questions and evidence that tends to make an allegation

of Title IX Sexual Harassment more or less likely to be true.

“Relevant” evidence and questions do not include the following types of evidence and questions, which are deemed “not relevant” at all stages of the Title IX Grievance Process:

- Evidence and questions about the complainant’s sexual predisposition or prior sexual behavior unless:
 - They are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or
 - They concern specific incidents of the complainant’s prior sexual behavior with respect to the respondent and are offered to prove consent.
 - Evidence and questions that constitute, or seek disclosure of, information protected under a legally-recognized privilege. Legally-recognized privileges include, e.g., attorney-client privilege.
 - Any party’s medical, psychological, and similar records unless the party has given voluntary, written consent.

7. Respondent

For the purposes of this Title IX Grievance policy, Respondent means any individual who has been reported to be the perpetrator of conduct that could constitute Title IX Sexual Harassment as defined under this policy.

D. Privacy vs. Confidentiality

Consistent with the Code of Conduct and other relevant policies, references made to confidentiality refer to the ability of identified confidential resources to not report crimes and violations to law enforcement or college officials without permission, except for extreme circumstances, such as a health and/or safety emergency or child abuse. References made to privacy mean FMCC officers and employees who cannot guarantee confidentiality but will maintain privacy to the greatest extent possible, and information disclosed will be relayed only as necessary to investigate and/or seek a resolution and to notify the Title IX Coordinator or designee, who is responsible for tracking patterns and spotting systemic issues. FMCC will limit the disclosure as much as practicable, even if the Title IX Coordinator determines that the request for confidentiality cannot be honored.

E. Disability Accommodations

This Policy does not alter any of FMCC’s obligations under federal disability laws including the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Parties may request reasonable accommodations for disclosed disabilities to the Title IX Coordinator at any point before or during the Title IX Grievance Process that do not fundamentally alter the Process. The Title IX Coordinator will not affirmatively provide disability accommodations that have not been specifically requested by the Parties, even where the Parties may be receiving accommodations in other FMCC programs and activities.

F. Making a Report Regarding Title IX Sexual Harassment to FMCC

Any person may report sex discrimination, including Title IX Sexual Harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report.

Contact Information for the Title IX Coordinator:

Arlene Spencer
Chief Student Affairs Officer
2805 State Highway 67
Johnstown NY 12095
aspencer@fmcc.suny.edu
518-736-3622 ext. 8100

Or

Jessica Berju
Human Resources Administrator
2805 State Highway 67
Johnstown NY 12095
jberju@fmcc.suny.edu
518-736-3622 ext 8404

Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address listed for the Title IX Coordinator.

1. Confidential Reporting

The following Officials will provide privacy, but not confidentiality, upon receiving a report of conduct prohibited under this policy:

- Title IX Coordinator or designee
- Chief Student Affairs Officer, 518-736-3622 ext. 8100
- Public Safety Office, 518-736-3622 ext. 8405

The following Officials may provide confidentiality:

- Coordinator of Accessibility, Counseling and Alternative Testing Service 518-736-3622 ext. 8145
- Any employee not otherwise designed as a mandatory reporter

2. Non-Investigatory Measures Available Under the Title IX Grievance Policy

a. Supportive Measures

Complainants and respondents (as defined above) have the right to receive supportive measures from FMCC regardless of whether a Formal Complaint is filed. Supportive measures are non-disciplinary and non-punitive.

Supportive measures may include, but are not limited to:

- Counseling;
- Extensions of deadlines or other course-related adjustments;
- Modifications of work or class schedules;
- Campus escort services;
- Restrictions on contact between the parties (no contact orders);
- Leaves of absence;
- Increased security and monitoring of certain areas of the campus;
- Room changes;
- Other supportive measures deemed fit for the situation.

FMCC will maintain the confidentiality of any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair FMCC's ability to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

Upon request, FMCC will provide both the accused or respondent and the reporting individual a prompt review, reasonable under the circumstances, of the need for and terms of any supportive measures that directly affects them, in which they are allowed to submit evidence in support of their request. In the event that supportive measures granted to or against one party impacts another party, both the directly impacted party and the secondarily impacted party may request a review of the terms or totality of the supportive measure by FMCC and may submit information as to the reasoning for requesting a change.

Requests to review supportive measures should be submitted to: Title IX Coordinator, Human Resource Manager 518-736-3622 ext. 8100. If a request for review is received from one party, the other party will be notified of the request for review. The Title IX Coordinator will issue a determination in response to the request, and notify both parties of the determination.

b. Emergency Removal

FMCC retains the authority to remove a respondent from FMCC's program or activity on an emergency basis, where FMCC (1) undertakes an individualized safety and risk analysis and (2) determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Title IX Sexual Harassment justifies a removal.

If FMCC determines such removal is necessary, the respondent will be provided notice and an opportunity to challenge the decision immediately following the removal. FMCC will provide both the accused or respondent and the reporting individual a prompt review, reasonable under the circumstances, of the need for and terms of a mandatory interim suspension, in which they are allowed to submit evidence in support of their request.

Requests to review a mandatory interim suspension should be submitted to: Dr. Jacqueline Snyder,

Associate Provost of Academic and Student Affairs, 518-736-3622 ext. 8936. If a request for review is received from one party, the other party will be notified of the request for review. The Associate Provost of Academic and Student Affairs will issue a determination in response to the request, and notify both parties of the determination.

c. Administrative Leave

FMCC retains the authority to place a non-student employee respondent on administrative leave during the Title IX Grievance Process, consistent with any applicable employee handbook, applicable collective bargaining agreement, and code of conduct.

G. Initiating the Title IX Grievance Process

1. Filing a Formal Complaint

The timeframe for the Title IX Grievance Process begins with the filing of a Formal Complaint. The Grievance Process will be concluded within a reasonably prompt manner, and no longer than ninety (90) business days after the filing of the Formal Complaint, provided that the Process may be extended for a good reason, including but not limited to the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities. The procedure for applying for extensions is described below.

A Formal Complaint may be filed with the Title IX Coordinator in person, by mail, by electronic mail, by using the contact information required to be listed for the Title IX Coordinator, and by any additional method designated by FMCC.

To file a Formal Complaint, a complainant must provide the Title IX Coordinator a written, signed complaint describing the facts alleged. Complainants are only able to file a Formal Complaint under this Policy if they are currently participating in, or attempting to participate in, the education programs or activities of FMCC, including as an employee. For complainants who do not meet this criteria, the College will utilize existing policy in the Code of Conduct, Sexual Misconduct Policy, and/or Discrimination and Harassment Policy.

If a complainant does not wish to make a Formal Complaint, the Title IX Coordinator may determine a Formal Complaint is necessary. FMCC will inform the complainant of this decision in writing, and the complainant need not participate in the process further but will receive all notices issued under this Policy and Process.

Nothing in the Title IX Grievance Policy or FMCC's policies prevents a complainant from seeking the assistance of state or local law enforcement alongside the appropriate on-campus process.

2. Multi-Party Situations

FMCC may consolidate Formal Complaints alleging Title IX Sexual Harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of Title IX Sexual Harassment arise out of the same facts or circumstances.

3. Determining Jurisdiction

The Title IX Coordinator or designee will determine if the instant Title IX Grievance Process should apply to a Formal Complaint. The Process will apply when all of the following elements are met, in the reasonable determination of the Title IX Coordinator:

- The conduct is alleged to have occurred on or after August 14, 2020;
- The conduct is alleged to have occurred in the United States;
- The conduct is alleged to have occurred in FMCC's education program or activity; and
- The alleged conduct, if true, would constitute Title IX Sexual Harassment as defined in this policy.

If all of the elements are met, FMCC will investigate the allegations according to the Grievance Process.

a. Allegations Potentially Falling Under Two Policies

If the alleged conduct, if true, includes both conduct that would constitute Title IX Sexual Harassment and conduct that would not constitute Title IX Sexual Harassment but may violate the Code of Conduct, Discrimination and Harassment Policy, Sexual Harassment Response and Prevention Statement, and/or Sexual Misconduct Policy, the following rules will apply:

- All allegations will be investigated by the investigator who is appointed to investigate the Title IX Sexual Harassment allegations. A second trained investigator may also be appointed to assist with the investigation and investigate the allegations that do not constitute Title IX Sexual Harassment.
- If only one investigator has been appointed to investigate the alleged conduct, the investigator will make:
 - A recommendation regarding the Title IX Sexual Harassment allegations, pursuant to the procedures set forth in this Policy, and
 - A determination regarding whether it is more likely than not that alleged conduct occurred that does not constitute Title IX Sexual Harassment but violates the Code of Conduct, Discrimination and Harassment Policy, and/or Sexual Misconduct Policy.
- If a second trained investigator has been appointed to investigate the alleged conduct that does not constitute Title IX Sexual Harassment, the second investigator will make a determination regarding whether it is more likely than not that alleged conduct occurred that does not constitute Title IX Sexual Harassment but violates the Code of Conduct, Discrimination and Harassment Policy, and/or Sexual Misconduct Policy.
- If a determination is made that it is more likely than not that alleged conduct occurred that does not constitute Title IX Sexual Harassment, but violates the Code of Conduct, Sexual Misconduct, and/or Discrimination and Harassment Policy, FMCC will pursue disciplinary action. Further information regarding internal disciplinary proceedings for students can be found in the Student Code of Conduct. Further information regarding internal disciplinary proceedings for employees can be found in the any applicable employee handbook and/or in any applicable collective bargaining agreement with FMCC.

b. Mandatory Dismissal

If any one of the elements of the definition of Title IX Sexual Harassment are not met, the Title IX Coordinator or designee will notify the parties that the Formal Complaint is being dismissed for the purposes of the Title IX Grievance Policy. Each party may appeal this dismissal using the procedure outlined in “Appeals,” below.

c. Discretionary Dismissal

The Title IX Coordinator or designee may dismiss a Formal Complaint brought under the Title IX Grievance Policy, or any specific allegations raised within that Formal Complaint, at any time during the investigation or hearing, if:

- A complainant notifies the Title IX Coordinator in writing that they would like to withdraw the Formal Complaint or any allegations raised in the Formal Complaint;
- The respondent is no longer enrolled or employed by FMCC; or,
- If specific circumstances prevent FMCC from gathering evidence sufficient to reach a determination regarding the Formal Complaint or allegations within the Formal Complaint.

Any party may appeal a dismissal determination using the process set forth in “Appeals,” below.

d. Notice of Dismissal

Upon reaching a decision that the Formal Complaint will be dismissed, FMCC will promptly send written notice of the dismissal of the Formal Complaint or any specific allegation within the Formal Complaint, and the reason for the dismissal, simultaneously to the parties through their FMCC email accounts. It is the responsibility of parties to maintain and regularly check their email accounts.

e. Notice of Removal

Upon dismissal of the Formal Complaint for the purposes of Title IX, FMCC retains discretion to utilize the Code of Conduct, Sexual Misconduct Policy, Discrimination and Harassment Policy, and/or Sexual Harassment Response and Prevention Statement, to determine if a violation has occurred. If so, FMCC will promptly send written notice of the dismissal of the Formal Complaint under the Title IX Grievance Process and removal of the allegations to the Code of Conduct, Sexual Misconduct Policy, and/or Discrimination and Harassment Policy processes.

4. Notice of Allegations

The Title IX Coordinator will draft and provide the Notice of Allegations to any party to the allegations of Title IX Sexual Harassment. Such notice will occur as soon as practicable after FMCC receives a Formal Complaint of the allegations, if there are no extenuating circumstances.

The parties will be notified by their FMCC email accounts if they are a student or employee, and by other reasonable means if they are neither.

FMCC will provide sufficient time for the parties to review the Notice of Allegations and prepare a response before any initial interview.

The Title IX Coordinator or designee may determine that the Formal Complaint must be dismissed on the mandatory grounds identified above, and will issue a Notice of Dismissal. If such a determination is made, any party to the allegations of Title IX Sexual Harassment identified in the Formal Complaint will receive the Notice of Dismissal in conjunction with, or in separate correspondence after, the Notice of Allegations.

a. Contents of Notice

The Notice of Allegations will include the following:

- Notice of FMCC's Title IX Grievance Process, including any informal resolution process, and a hyperlink to a copy of the process.
- Notice of the allegations potentially constituting Title IX Sexual Harassment, and sufficient details known at the time the Notice is issued, such as the identities of the parties involved in the incident, if known, including the complainant; the conduct allegedly constituting Title IX Sexual Harassment; and the date and location of the alleged incident, if known.
- 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.
- A statement that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney.
- A statement that before the conclusion of the investigation, the parties may inspect and review evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including the evidence upon which FMCC does not intend to rely in reaching a determination regarding responsibility, and evidence that both tends to prove or disprove the allegations, whether obtained from a party or other source.
- A statement that the Code of Conduct § IX(1)(b) prohibits knowingly making false statements or knowingly submitting false information to any College official, faculty member or office, including during the grievance process.

b. Ongoing Notice

If, in the course of an investigation, FMCC decides to investigate allegations about the complainant or respondent that are not included in the Notice of Allegations and are otherwise covered Title IX Sexual Harassment falling within the Title IX Grievance Policy, FMCC will notify the parties whose identities are known of the additional allegations by their FMCC email accounts or other reasonable means.

The parties will be provided sufficient time to review the additional allegations to prepare a response before any initial interview regarding those additional charges.

c. Notice of Meetings and Interviews

FMCC will provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings with a party, with sufficient time for the party to prepare to participate.

5. Advisor of Choice and Participation of Advisor of Choice

FMCC will provide the parties equal access to advisors and support persons; any restrictions on advisor participation will be applied equally.

FMCC has a long-standing practice of requiring students to participate in the process directly and not through an advocate or representative. Students participating as Complainant or Respondent in this process may be accompanied by an Advisor of Choice to any meeting or hearing to which they are required or are eligible to attend. The Advisor of Choice is not an advocate. Except where explicitly stated by this Policy, as consistent with the Final Rule, Advisors of Choice shall not participate directly in the process as per standard policy and practice of FMCC.

FMCC will not intentionally schedule meetings or hearings on dates where the Advisors of Choice for all parties are not available, provided that the Advisors act reasonably in providing available dates and work collegially to find dates and times that meet all schedules.

FMCC's obligations to investigate and adjudicate in a prompt timeframe under Title IX and other college policies apply to matters governed under this Policy, and FMCC cannot agree to extensive delays solely to accommodate the schedule of an Advisor of Choice. The determination of what is reasonable shall be made by the Title IX Coordinator or designee. FMCC will not be obligated to delay a meeting or hearing under this process more than five (5) days due to the unavailability of an Advisor of Choice, and may offer the party the opportunity to obtain a different Advisor of Choice or utilize one provided by FMCC.

6. Delays

Each party may request a one-time delay in the Grievance Process of up to five (5) days for good cause (granted or denied in the sole judgment of the Title IX Coordinator, Director of Student Conduct, or designee) provided that the requestor provides reasonable notice and the delay does not overly inconvenience other parties.

For example, a request to take a five day pause made an hour before a hearing for which multiple parties and their advisors have traveled to and prepared for shall generally not be granted, while a request for a five day pause in the middle of investigation interviews to allow a party to obtain certain documentary evidence shall generally be granted.

The Title IX Coordinator or designee shall have sole judgment to grant further pauses in the Process.

H. Investigation

1. General Rules of Investigations

The Title IX Coordinator and/or designee will perform an investigation under a reasonably prompt timeframe of the conduct alleged to constitute Title IX Sexual Harassment after issuing the Notice of Allegations.

FMCC presumes that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process. The Title IX Coordinator and/or designee will perform an objective evaluation of all relevant evidence - including both

inculpatory and exculpatory evidence. Credibility determinations may not be based on a person's status as a complainant, respondent, or witness.

FMCC and not the parties, has the burden of proof and the burden of gathering evidence, i.e. the responsibility of showing a violation of this Policy has occurred. This burden does not rest with either party, and either party may decide not to share their account of what occurred or may decide not to participate in an investigation or hearing. This does not shift the burden of proof away from FMCC and does not indicate responsibility.

FMCC cannot access, consider, or disclose medical records without a waiver from the party (or parent, if applicable) to whom the records belong or of whom the records include information. FMCC will provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence, (i.e. evidence that tends to prove and disprove the allegations) as described below.

2. Inspection and Review of Evidence

Prior to the completion of the investigation, the parties will have an equal opportunity to inspect and review the evidence obtained through the investigation. The purpose of the inspection and review process is to allow each party the equal opportunity to meaningfully respond to the evidence prior to conclusion of the investigation.

Evidence that will be available for inspection and review by the parties will be any evidence that is directly related to the allegations raised in the Formal Complaint. It will include any:

- Evidence that is relevant, even if that evidence does not end up being relied upon by FMCC in making a determination regarding responsibility; and
- inculpatory or exculpatory evidence (i.e. evidence that tends to prove or disprove the allegations) that is directly related to the allegations, whether obtained from a party or other source.

All parties must submit any evidence they would like the investigator to consider prior to when the parties' time to inspect and review evidence begins.

FMCC will send the evidence made available for each party and each party's advisor, if any, to inspect and review through an electronic format or a hard copy. FMCC is not under an obligation to use any specific process or technology to provide the evidence and shall have the sole discretion in terms of determining format and any restrictions or limitations on access.

The parties will have ten (10) calendar days to inspect and review the evidence and submit a written response by email to the investigator. The investigator will consider the parties' written responses before completing the Investigative Report.

FMCC will provide copies of the parties' written responses to the investigator to all parties and their advisors, if any.

The investigator has thirty (30) days to generate a report or, alternatively, may provide the parties with written notice extending the investigation for thirty (30) days and explaining the reason for the extension.

Any evidence subject to inspection and review will be available at any hearing, including for purposes of cross-examination.

The parties and their advisors must sign an agreement not to disseminate any of the evidence subject to inspection and review or use such evidence for any purpose unrelated to the Title IX grievance process.

The parties and their advisors agree not to photograph or otherwise copy the evidence.

3. Inclusion of Evidence Not Directly Related to the Allegations

Evidence obtained in the investigation that is determined in the reasoned judgment of the investigator not to be directly related to the allegations in the Formal Complaint will be included in the appendices to the investigative report.

I. Investigative Report

The Title IX Coordinator and/or designee will create an Investigative Report that fairly summarizes relevant evidence, will and provide that Report to the parties at least ten (10) calendar days prior the hearing in an electronic format or a hard copy for each party's review and written response.

The Investigative Report is not intended to catalog all evidence obtained by the investigator, but only to provide a fair summary of that evidence.

Only relevant evidence (including both inculpatory and exculpatory – i.e. tending to prove and disprove the allegations - relevant evidence) will be referenced in the Investigative Report.

The investigator may redact irrelevant information from the Investigative Report when that information is contained in documents or evidence that is/are otherwise relevant.

J. Hearing

1. General Rules of Hearings

FMCC will not issue a disciplinary sanction arising from an allegation of Title IX Sexual Harassment without holding a live hearing, unless otherwise resolved through an informal resolution process.

The live hearing may be conducted with all parties physically present in the same geographic location, or, at FMCC's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually through video remote conferencing. Video remote conferencing will consist of using a visual screen with an online meeting platform so that a face-to-face meeting can be accomplished without having to move to a single location together. This technology will enable participants simultaneously to see and hear each other. At its discretion, FMCC may delay or adjourn a hearing based on technological errors not within a party's control.

All proceedings will be recorded through audio recording. That recording will be made available to the parties for inspection and review.

Prior to obtaining access to any evidence, the parties and their advisors must sign an agreement not to disseminate any of the testimony heard or evidence obtained in the hearing or use such testimony or evidence for any purpose unrelated to the Title IX Grievance Process. Once signed, this Agreement may not be withdrawn.

2. Continuances or Granting Extensions

FMCC may determine that multiple sessions or a continuance (i.e. a pause on the continuation of the hearing until a later date or time) is needed to complete a hearing. If so, FMCC will notify all participants and endeavor to accommodate all participants' schedules and complete the hearing as promptly as practicable.

3. Participants in the live hearing

Live hearings are not public, and the only individuals permitted to participate in the hearing are as follows:

a. Complainant and Respondent (The Parties)

- The parties cannot waive the right to a live hearing.
- FMCC may still proceed with the live hearing in the absence of a party, and may reach a determination of responsibility in their absence, including through any evidence gathered that does not constitute a "statement" by that party.
- FMCC will not threaten, coerce, intimidate or discriminate against the party in an attempt to secure the party's participation.
- The decision-maker cannot draw an inference about the determination regarding responsibility based solely on a party's absence from the live hearing or refusal to answer cross examination or other questions.

b. The Decision-maker

- The hearing body will consist of a panel of three (3) decision-makers.
- No member of the hearing body will also have served as the Title IX Coordinator, Title IX investigator, or advisor to any party in the case, nor may any member of the hearing body serve on the appeals body in the case.
- No member of the hearing body will have a conflict of interest or bias in favor of or against complainants or respondents generally, or in favor or against the parties to the particular case. See Appendix A for details on bias.
- The hearing body will be trained on topics including how to serve impartially, issues of relevance, including how to apply the rape shield protections provided for complainants, and any technology to be used at the hearing.
- The parties will have an opportunity to raise any objections regarding a decision-maker's actual or perceived conflicts of interest or bias at the commencement of the live hearing.

c. Advisor of choice

- The parties have the right to select an advisor of their choice, who may be, but does not have to be, an attorney.
- The advisor of choice may accompany the parties to any meeting or hearing they are permitted to attend, but may not speak for the party, except for the purpose of cross-examination.
- In addition to selecting an advisor to conduct cross-examination, the parties may select an advisor who may accompany the parties to any meeting or hearing they are permitted to attend, but may not speak for the party.
- The parties are not permitted to conduct cross-examination; it must be conducted by the advisor. As a result, if a party does not select an advisor, FMCC will select an advisor to serve in this role for the limited purpose of conducting the cross-examination at no fee or charge to the party.
- The advisor is not prohibited from having a conflict of interest or bias in favor of or against complainants or respondents generally, or in favor or against the parties to the particular case.
- The advisor is not prohibited from being a witness in the matter.
- If a party does not attend the live hearing, the party's advisor may appear and conduct cross-examination on their behalf.
- If neither a party nor their advisor appear at the hearing, FMCC will provide an advisor to appear on behalf of the non-appearing party.
- Advisors shall be subject to FMCC's Rules of Decorum, and may be removed upon violation of those Rules. The Rules of Decorum are contained in **Appendix C**.

d. Witnesses

- Witnesses cannot be compelled to participate in the live hearing, and have the right not to participate in the hearing free from retaliation.

4. Hearing Procedures

For all live hearings conducted under this Title IX Grievance Process, the procedure will be as follows:

- The Decision-maker will open and establish rules and expectations for the hearing;
- The Parties will each be given the opportunity to provide opening statements;
- The Decision-maker will ask questions of the Parties and Witnesses;
- Parties will be given the opportunity for live cross-examination after the Decision-maker conducts its initial round of questioning; During the Parties' cross-examination, the decision-maker will have the authority to pause cross-examination at any time for the purposes of asking decision-maker's own follow up questions; and any time necessary in order to enforce the established rules of decorum.
- Should a Party or the Party's Advisor choose not to cross-examine a Party or Witness, the Party shall affirmatively waive cross-examination through a written or oral statement to the Decision-maker. A Party's waiver of cross-examination does not eliminate the ability of the Decision-maker to use statements made by the Party.
- Throughout the proceedings, the Rules of Decorum, found in **Appendix C**, must be followed at all times.

5. Live Cross-Examination Procedure

Each party's advisor will conduct live cross-examination of the other party or parties and witnesses. During this live cross-examination, the advisor will ask the other party or parties and witnesses relevant questions and follow-up questions, including those challenging credibility directly, orally, and in real time.

Before any cross-examination question is answered, the decision-maker will determine if the question is relevant, as set forth in the Relevance Policy, attached as **Appendix B**. Cross-examination questions that are duplicative of those already asked, including by the decision-maker, may be deemed irrelevant if they have been asked and answered.

6. Review of Recording

The recording of the hearing will be available for review by the parties within five (5) calendar days, unless there are any extenuating circumstances. The recording of the hearing will not be provided to parties or advisors of choice.

K. Determination Regarding Responsibility

1. Standard of Proof

FMCC uses the preponderance of the evidence standard for investigations and determinations regarding responsibility of Formal Complaints covered under this Policy. This means that the investigation and hearing determine whether it is more likely than not that a violation of the Policy occurred. The same standard of evidence applies for all Formal Complaints of Title IX Sexual Harassment.

2. General Considerations for Evaluating Testimony and Evidence

While the opportunity for cross-examination is required in all Title IX hearings, determinations regarding responsibility may be based in part, or entirely, on documentary, audiovisual, and digital evidence, as warranted in the reasoned judgment of the Decision-maker.

Decision-makers shall not draw inferences regarding a party or witness's credibility based on the party or witness's status as a complainant, respondent, or witness, nor shall it base its judgments in stereotypes about how a party or witness would or should act under the circumstances.

Generally, credibility judgments should rest on the demeanor of the party or witness, the plausibility of their testimony, the consistency of their testimony, and its reliability in light of corroborating or conflicting testimony or evidence.

Still, credibility judgments should not rest on whether a party or witness' testimony is non-linear or incomplete, or if the party or witness is displaying stress or anxiety.

Decision makers will afford the highest weight relative to other testimony to first-hand testimony by parties and witnesses regarding their own memory of specific facts that occurred. Both inculpatory and exculpatory (i.e. tending to prove and disprove the allegations) evidence will be weighed in equal

fashion.

Except where specifically barred by the Title IX Final Rule, a witness's testimony regarding third-party knowledge of the facts at issue will be allowed, but will generally be accorded lower weight than testimony regarding direct knowledge of specific facts that occurred.

FMCC allows parties to call "expert witnesses" for direct and cross-examination. FMCC does not provide for expert witnesses in other proceedings. While the expert witness will be allowed to testify and be crossed as required by the Final Rule, the decision-maker will be instructed to afford lower weight to non-factual testimony of the expert relative to fact witnesses, and any expert testimony that is not directed to the specific facts that occurred in the case will be afforded lower weight relative to fact witnesses, regardless of whether the expert witness testimony is the subject of cross-examination and regardless of whether all parties present experts as witnesses.

FMCC allows parties to call character witnesses to testify. FMCC does not provide for character witnesses in other proceedings. While the character witnesses will be allowed to testify and be crossed as required by the Final Rule, the decision-maker will be instructed to afford very low weight to any non-factual character testimony of any witness.

FMCC will admit and allow testimony regarding polygraph tests ("lie detector tests") and other procedures that are outside of standard use in academic and non-academic conduct processes. While the processes and testimony about them will be allowed to testify and be crossed as required by the Final Rule, the decision-maker will be instructed to afford lower weight to such processes relative to the testimony of fact witnesses.

Where a party or witness' conduct or statements demonstrate that the party or witness is engaging in retaliatory conduct, including but not limited to witness tampering and intimidation, the Decision-maker may draw an adverse inference as to that party or witness' credibility.

3. Components of the Determination Regarding Responsibility

The written Determination Regarding Responsibility will be issued simultaneously to all parties through their FMCC email account, or other reasonable means as necessary. The Determination will include:

- Identification of the allegations potentially constituting Title IX Sexual Harassment;
- A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- Findings of fact supporting the determination;
- Conclusions regarding which section of the Code of Conduct, if any, the respondent has or has not violated.
- For each allegation:
 - A statement of, and rationale for, a determination regarding responsibility;
 - A statement of, and rationale for, any disciplinary sanctions the recipient imposes on the respondent; and
 - A statement of, and rationale for, whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the recipient to the complainant; and

- The recipient's procedures and the permitted reasons for the complainant and respondent to appeal (described below in "Appeal").

4. Disciplinary Penalties and Other Remedies

Discipline for Title IX Sexual Harassment may take a variety of forms, depending upon the circumstances of a particular case.

- Students: The disciplinary sanctions which may be imposed on students who have been found responsible for committing Title IX Sexual Harassment are the following: warning, disciplinary probation, loss of privileges, fines, restitution, sanctions, parental/guardian notification, residence hall suspension, residence hall expulsion, short-term college suspension, long-term college suspension, administrative suspension, expulsion, revocation of degree, withholding degree, prohibition of professional practice, and mandatory assessment/counseling.
- Employees: The disciplinary sanctions which may be imposed on employees who have been found responsible for Title IX Sexual Harassment are the following: verbal warning, written reprimand, mandatory training session, no contact order, suspension without pay, termination, and/or termination with the issuance of a *persona non grata* letter.

FMCC will also take appropriate remedial measures necessary to end such conduct, prevent any such future conduct, and correct any personnel or academic decisions made which are related to the prohibited conduct. Remedies may include, but are not limited to, continuing or commencing any of the above-listed "interim measures." These remedies are separate from, and in addition to, any supportive measures that may have been provided prior to the conclusion of the investigation.

5. Timeline of Determination Regarding Responsibility

If there are no extenuating circumstances, the determination regarding responsibility will be issued by FMCC within ten (10) business days of the completion of the hearing.

6. Finality

The determination regarding responsibility becomes final either on the date that FMCC provides the parties with the written determination of the result of the appeal, if an appeal is filed consistent with the procedures and timeline outlined in "Appeals" below, or if an appeal is not filed, the date on which the opportunity to appeal expires.

L. Appeals

Each party may appeal (1) the dismissal of a Formal Complaint or any included allegations and/or (2) a determination regarding responsibility. To appeal, a party must submit their written appeal within five (5) calendar days of being notified of the decision, indicating the grounds for the appeal.

The limited grounds for appeal available are as follows:

- Procedural irregularity that affected the outcome of the matter (i.e. a failure to follow FMCC's own procedures);
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against an individual party, or for or against complainants or respondents in general, that affected the outcome of the matter.

The submission of appeal stays any sanctions for the pendency of an appeal. Supportive measures and remote learning opportunities remain available during the pendency of the appeal.

If a party appeals, FMCC will as soon as practicable notify the other party in writing of the appeal, however the time for appeal shall be offered equitably to all parties and shall not be extended for any party solely because the other party filed an appeal.

Appeals may be no longer than five (5) pages (including attachments). Appeals should be submitted in electronic form using ARIAL or TIMES NEW ROMAN, 12 point font, and single-spaced. Appeals should use footnotes, not endnotes. Appeals that do not meet these standards may be returned to the party for correction, but the time for appeal will not be extended unless there is evidence that technical malfunction caused the appeal document not to meet these standards.

Appeals will be decided by a three (3) panel member Appellate Board who will be free of conflict of interest and bias, and will not serve as investigator, Title IX Coordinator, or hearing decision maker in the same matter.

The outcome of appeal will be provided in writing simultaneously to both parties, and include the rationale for the decision.

M. Retaliation

FMCC will keep the identity of any individual who has made a report or complaint of sex discrimination confidential, including the identity of any individual who has made a report or filed a Formal Complaint of Title IX Sexual Harassment under this Title IX Grievance Policy, any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, and any witness, except as permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding under this Title IX Grievance Policy.

No person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX of the Education Amendments of 1972 or its implementing regulations.

No person may intimidate, threaten, coerce, or discriminate against any individual 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 Title IX Grievance Policy.

Any intimidation, threats, coercion, or discrimination, for the purpose of interfering with any right or

privilege secured by Title IX or its implementing regulations constitutes retaliation. This includes any charges filed against an individual for code of conduct violations that do not involve sex discrimination or Title IX Sexual Harassment, but that arise from the same facts or circumstances as a report or complaint of sex discrimination or a report or Formal Complaint of Title IX Sexual Harassment.

Complaints alleging retaliation may be filed according to the Sexual Misconduct Policy and/or Discrimination and Harassment Policy.

Appendix A

Bias/Conflict of Interest

Is it Bias/ a Conflict of Interest (*per se* and on its own):

Employment Status		
If the Title IX official is an employee of the recipient?	No	"[R]ecipients can comply with the final regulations by using the recipient's own employees" Title IX 85 Fed. Reg. 30,026, 30,252 (May 19, 2020) (to be codified at 34 C.F.R. pt. 106).
If the Title IX official is "affiliated" with the recipient?	No	"The Department declines to require recipients to use outside, unaffiliated Title IX personnel because the Department does not conclude that such prescription is necessary to effectuate the purposes of the final regulations" <i>Id.</i> at 30,252.
If the Title IX Official has a supervisory relationship with other Title IX personnel?	No	"[T]he Department declines to define certain employment relationships or administrative hierarchy arrangements as <i>per se</i> prohibited conflicts of interest" <i>Id.</i> at 30,252. "[T]he final regulations do not prescribe any particular administrative 'chain of reporting' restrictions or declare any such administrative arrangements to be <i>per se</i> conflicts of interest prohibited under § 106.45(b)(1)(iii)." <i>Id.</i> at 30,252 n.1035. "[T]he Department will hold a recipient accountable for the end result of using Title IX personnel free from conflicts of interest and bias, regardless of the employment or supervisory relationships among various Title IX personnel" <i>Id.</i> at 30,252.
Please note: Although the Department wishes only to prescribe those measures necessary for compliance, they do recognize that recipients may adopt additional "best practices" to avoid violating the regulations. <i>See id.</i> at 30,252. The Department specifically names two such practices: - ensuring that investigators have institutional independence - deciding that Title IX Coordinators should have no role in the hiring or firing of investigators. <i>Id.</i>		
Professional Experiences or Affiliations		
A history of working in the field of sexual violence	No	"[T]he very training required by § 106.45(b)(1)(iii) is intended to provide Title IX personnel with the tools needed to serve impartially and without bias such that the prior professional experience of a person whom a recipient would like to have in a Title IX role need not disqualify the person from obtaining the requisite training to serve impartially in a Title IX role." <i>Id.</i> at 30,252.
Prior work as a victim advocate	No	
Prior work as a defense attorney	No	

Other Characteristics		
Student of the recipient	No	"The Department notes that the final regulations do not preclude a recipient from allowing student leaders to serve in Title IX roles so long as the recipient can meet all requirements in § 106.45 and these final regulations, and leaves it to a recipient's judgment to decide under what circumstances, if any, a recipient wants to involve student leaders in Title IX roles." <i>Id.</i> at 30,253.
Gender	No	The Department cautions recipients not to apply generalizations when evaluating particular Title IX personnel for bias, warning that this may result in an unreasonable determination. <i>Id.</i> at 30,252.
Sexual assault survivor	No	
Self-professed feminist	No	
Supporting women's or men's rights	No	
Having had personal, negative experiences with men or women	No	
Determining whether bias exists is a fact-specific endeavor. <i>See id.</i> at 30,252. The Department encourages recipients to apply a common-sense and "objective" reasonable person standard when evaluating personnel. <i>Id.</i>		
Grievance Process Participation		
Signing a formal complaint as the Title IX Coordinator	No	"Even where the Title IX Coordinator is also the investigator, the Title IX Coordinator must be trained to serve impartially, and the Title IX Coordinator does not lose impartiality solely due to signing a formal complaint on the recipient's behalf." <i>Id.</i> at 30, 135.
Participating in an emergency removal decision	No, unless it biases the employee	"Section 106.44(c) does not preclude a recipient from using Title IX personnel trained under § 106.45(b)(1)(iii) to make the emergency removal decision or conduct a post-removal challenge proceeding, but if involvement with the emergency removal process results in bias or conflict of interest for or against the complainant or respondent, § 106.45(b)(1)(iii) would preclude such personnel from serving in those roles during a grievance process." <i>Id.</i> at 30,235.
Serving as a party advisor	Exempt from requirement not to have bias	"The final regulations impose no prohibition of conflict of interest or bias for such advisors, nor any training requirement for such advisors, in order to leave recipients as much flexibility as possible to comply with the requirement to provide those advisors." <i>Id.</i> at 30,254 n.1041.
Title IX coordinator serving as...		
...investigator	No	"The final regulations would not remove the expertise of Title IX Coordinators from the grievance process. Section 106.45(b)(7)(i) does not prevent the Title IX Coordinator from serving as the investigator; rather, this provision only prohibits the decision-maker from being the same person as either the Title IX Coordinator or the investigator." <i>Id.</i> at 30,370.
...informal resolution facilitator	No, but not recommended	"These final regulations do not require a recipient to provide an informal resolution process pursuant to § 106.45(b)(9) and do not preclude the Title IX Coordinator from serving as the person designated by a recipient to facilitate an informal resolution process." <i>Id.</i> at 30,558.
...decision-maker	Yes	"Separating the functions of a Title IX Coordinator from those of the decision-maker is no reflection on the ability of Title IX Coordinators to serve impartially and with expertise. Rather, requiring different individuals to serve in those roles acknowledges that the different phases of a report and formal complaint of sexual harassment serve distinct purposes." <i>Id.</i> at 30,370.

...appeal decision-maker	Yes	"§ 106.45(b)(8)(iii) makes it clear that the appeal decision-maker cannot be the same person as the decision-maker below, or as the Title IX Coordinator or investigator in the case. This ensures that the recipient's appeal decision reviews the underlying case independently." <i>Id.</i> at 30,399.
Title IX Investigator serving as...		
...Title IX coordinator	No	See above. The Title IX coordinator may also serve as investigator. <i>Id.</i> at 30,370.
...decision-maker	Yes	"Separating the roles of investigation from adjudication therefore protects both parties by making a fact-based determination regarding responsibility based on objective evaluation of relevant evidence more likely." <i>Id.</i> at 30,370.
...appeal decision-maker	Yes	
Hearing decision-maker serving as...		
...Title IX coordinator	Yes	See above. The Title IX coordinator may not serve as hearing decision-maker. <i>Id.</i> at 30,370.
...investigator	Yes	"[F]ormally separating the investigative and adjudicative roles in the Title IX grievance process is important to reduce the risk and perception of bias, increase the reliability of fact-finding, and promote sound bases for responsibility determinations" <i>Id.</i> at 30,368.
...appeal decision-maker	Yes	"[I]t is important for the decision-maker reviewing appeals to be a different person than the person who made the initial decision, in part, because the decision-maker on appeal is asked to review the determination reached by the original decision-maker (including based on any claim of bias or conflict of interest on the part of the decision-maker)." <i>Id.</i> at 30,563.
Hearing officer (should one be used) serving as...		
...decision-maker	No	"With respect to the roles of a hearing officer and decision-maker, the final regulations leave recipients discretion to decide whether to have a hearing officer (presumably to oversee or conduct a hearing) separate and apart from a decision-maker, and the final regulations do not prevent the same individual serving in both roles." <i>Id.</i> at 30,372.
...appeal decision-maker	Yes	"[T]he appeal decision-maker must be a different person than the Title IX Coordinator or any investigators or decision-makers that reached the initial determination of responsibility, will help to ensure that recipients' appeal processes are adequately independent and effective in curing possible unfairness or error." <i>Id.</i> at 30,399.
The Department asserts there is danger in Title IX personnel who serve in multiple roles being improperly influenced by information gleaned from one position when serving in another. See <i>id.</i> at 30,369, 30,370. Setting limitations on which roles may be doubled (primarily separating the investigative and adjudicative functions of a grievance process) protects against the possibility of these improper influences. <i>Id.</i> The Department believes that creating this separation will help to ensure that determinations are based only on the relevant evidence and therefore increase the overall reliability of those determinations. <i>Id.</i>		
Grievance Process Outcomes		
The number of particular outcomes either determining responsibility or non-responsibility	No	"the mere fact that a certain number of outcomes result in determinations of responsibility, or non-responsibility, does not necessarily indicate or imply bias on the part of Title IX personnel" <i>Id.</i> at 30,252.
The Department cautions against presuming bias based on the outcomes of prior grievance procedures. <i>Id.</i> at 30,252. Because the regulations require each case be determined on its merits, the number of particular outcomes determining responsibility or non-responsibility, alone, do not indicate bias. <i>Id.</i>		

Appendix B

Guide for Determining Relevance

What is the purpose of this Guide?

On May 19, 2020, the U.S. Department of Education issued Final Rules governing the Title IX grievance process, effective August 14, 2020. The Final Rule requires that all colleges and universities hold a live hearing before making any determination regarding responsibility for covered reports of Title IX Sexual Harassment, including sexual violence. This hearing must provide for live cross-examination by the parties' advisors.

Any question posed by the advisors must be evaluated for "relevance" in real time by the hearing officer. According to Final Rule §106.45(b)(6)(i):

Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

What is a relevant question?

The Department of Education encourages institutions to apply the "plain and ordinary meaning" of relevance in their determinations. 85 Fed. Reg. 30026, 30304 (May 19, 2020). Basically, a relevant question will ask whether the facts material to the allegations under investigation are more or less likely to be true. *Id.* at 30294. A question not directly related to the allegations will generally be irrelevant.

Officials should use common sense in this understanding. Things may be interesting or surprising but not be relevant.

Relevance decisions should be made on a question-by-question basis, looking narrowly at whether the question seeks information that will aid the decision-maker in making the underlying determination. The relevance decision should not be based on who asked the question, their possible (or clearly stated) motives, who the question is directed to, or the tone or style used to ask about the fact. Relevance decisions should not be based in whole or in part upon the sex or gender of the party for whom it is asked or to whom it is asked, nor based upon their status as complainant or respondent, past status as complainant or respondent, any organizations of which they are a member, or any other protected class covered by federal or state law (e.g. race, sexual orientation, disability).

If a question is relevant but offered in an abusive or argumentative manner, the decision-maker has the discretion to ask the advisor to rephrase the question in an appropriate manner, consistent with the institution's decorum policy for hearings.

What if the question is "prejudicial" and concerns sensitive or embarrassing issues?

Much of the content within these hearings may be considered sensitive and/or embarrassing by parties

or advisors. However, relevant questions need to be considered even if a party or advisor believes the danger of unfair prejudice substantially outweighs their probative value. Only irrelevant questions (detailed below), including about the complainant's prior sexual history, may be excluded.

What is an irrelevant question?

1. Question about Complainant's Prior Sexual Behavior or Sexual Predisposition

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not 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.

2. Question regarding Privileged Information

Questions that constitute, or seek disclosure of, information protected under a legally-recognized privilege are irrelevant. Individuals with legal privilege may include attorneys, medical providers (physician, dentist, podiatrist, chiropractor, nurse), psychologists, clergy, rape crisis counselors, and social workers.

3. Questions about Undisclosed Medical Records

Questions that call for information about any party's medical, psychological, and similar records are irrelevant unless the party has given voluntary, written consent.

4. Duplicative Questions

Questions that repeat, in sum or substance, questions already asked by the decision-maker prior to cross-examination, or by a party's advisor during cross-examination (and if part of your process, during direct examination), may be ruled duplicative, and therefore irrelevant.

How should the decision-maker reach a relevance determination?

If the decision-maker is a single individual, the decision-maker will be solely responsible for determining the relevance of the question before it is asked.

If the decision-maker is a panel, the panel's Chair will make all determinations of relevance.

What should the relevance determination consist of?

The Department of Education explains that the Final Rule "does not require a decision-maker to give a lengthy or complicated explanation" in support of a relevance determination. Rather, "it is sufficient, for example, for a decision maker to explain that a question is irrelevant because the question calls for prior sexual behavior information without meeting one of the two exceptions, or because the question asks about a detail that is not probative of any material fact concerning the allegations."

As such, the decision-maker need only provide a brief explanation of the determination, which will ordinarily consist of one of the following statements depending on the situation.

1. Generally probative questions

- The question is relevant because it asks whether a fact material to the allegations is more or less likely to be true.
- The question is irrelevant because it asks about a detail that does not touch on whether a material fact concerning the allegations is more or less likely to be true.

2. Question about Complainant's Prior Sexual Behavior or Sexual Predisposition

- The question is relevant because although it calls for prior sexual behavior information about the complainant, it meets one of the two exceptions to the rape shield protections defined in 34 C.F.R. § 106.45(b)(6)(i), and it tends to prove that a material fact at issue is more or less likely to be true [denote which exception].
 - Exception one: The question is asked to prove that someone other than the respondent committed the conduct alleged by the complainant.
 - Exception two: The question concerns specific incidents of the complainant's prior sexual behavior with respect to the respondent and is asked to prove consent
- The question is irrelevant because it calls for prior sexual behavior information about the complainant without meeting one of the two exceptions to the rape shield protections defined in 34 C.F.R. § 106.45(b)(6)(i).

3. Question regarding Privileged Information

- The question is irrelevant because it calls for information shielded by a legally-recognized privilege.
- The question is relevant because, although it calls for information shielded by a legally-recognized privilege, that privilege has been waived in writing, and the question tends to prove that a material fact at issue is more or less likely to be true.

4. Questions about Undisclosed Medical Records

- The question is irrelevant because it calls for information regarding a party's medical, psychological, or similar record without that party's voluntary, written consent.
- This question is relevant because although it calls for a party's medical, psychological, or similar records, that party has given their voluntary, written consent to including this material, and it tends to prove that a material fact at issue is more or less likely to be true. 85 Fed. Reg. 30026, 30294 (May 19, 2020).

5. Duplicative Questions

- The question is irrelevant because it is duplicative of a question that was asked and answered.

The decision-maker may relay a longer explanation if necessary under the circumstances.

The relevance determination will be conveyed orally, except as needed to accommodate a disclosed disability of a hearing participant, and all relevance determinations will be preserved in the record of the proceeding.

May the parties and/or their advisors ask the decision-maker to reconsider their relevance decision?

Any party or their advisor may request that the decision-maker reconsider their relevance determination.

The decision-maker may deny or grant the request to reconsider. This determination is final, but may be subject to appeal under the Title IX Grievance Process.

Appendix C

Rules of Decorum

Purpose of the Rules of Decorum

Title IX hearings are not civil or criminal proceedings, and are not designed to mimic formal trial proceedings. They are primarily educational in nature, and the U.S. Department of Education, writing about Title IX in the Final Rule “purposefully designed these final regulations to allow recipients to retain flexibility to adopt rules of decorum that prohibit any party advisor or decision-maker from questioning witnesses in an abusive, intimidating, or disrespectful manner.” 85 Fed. Reg. 30026, 30319 (May 19, 2020). The Department has determined that institutions “are in a better position than the Department to craft rules of decorum best suited to their educational environment” and build a hearing process that will reassure the parties that the institution “is not throwing a party to the proverbial wolves.” *Id.*

To achieve this purpose, institutions may provide for reasonable rules of order and decorum, which may be enforced through the removal of an advisor who refuses to comply with the rules. *Id.*, at 30320. As the Department explains, the removal process “incentivizes a party to work with an advisor of choice in a manner that complies with a recipient’s rules that govern the conduct of a hearing, and incentivizes colleges and universities to appoint advisors who also will comply with such rules, so that hearings are conducted with respect for all participants.” *Id.*

At base, these Rules of Decorum require that all parties, advisors of choice, and institutional staff treat others who are engaged in the process with respect.

The rules and standards apply equally to all Parties and their Advisors regardless of sex, gender, or other protected class, and regardless of whether they are in the role of Complainant or Respondent.

Rules of Decorum

The following Rules of Decorum are to be observed in the hearing and applied equally to all parties (meaning the complainant and respondent) and advisors:

- Questions must be conveyed in a neutral tone.
- Parties and advisors will refer to other parties, witnesses, advisors, and institutional staff using the name and gender used by the person and shall not intentionally mis-name or mis-gender that person in communication or questioning.
- No party may act abusively or disrespectfully during the hearing toward any other party or to witnesses, advisors, or decision-makers.
- While an advisor may be an attorney, no duty of zealous advocacy should be inferred or enforced within this forum.
- The advisor may not yell, scream, badger, or physically “lean in” to a party or witness’s personal space. Advisors may not approach the other party or witnesses without obtaining permission from the decision-maker.

- The advisor may not use profanity or make irrelevant ad hominem attacks upon a party or witness. Questions are meant to be interrogative statements used to test knowledge or understand a fact; they may not include accusations within the text of the question.
- The advisor may not ask repetitive questions. This includes questions that have already been asked by the decision-maker, the advisor in cross-examination, or [if this is the institutional process] the party or advisor in direct testimony. When the decision-maker determines a question has been “asked and answered” or is otherwise not relevant, the advisor must move on.
- Parties and advisors may take no action at the hearing that a reasonable person in the shoes of the affected party would see as intended to intimidate that person (whether party, witness, or official) into not participating in the process or meaningfully modifying their participation in the process.

Warning and Removal Process

The decision-maker shall have sole discretion to determine if the Rules of Decorum have been violated. The decision-maker will notify the offending person of any violation of the Rules.

Upon a second or further violation of the Rules, the decision-maker shall have discretion to remove the offending person or allow them to continue participating in the hearing or other part of the process.

Where the decision-maker removes a party’s advisor, the party may select a different advisor of their choice, or accept an advisor provided by the institution for the limited purpose of cross-examination at the hearing. Reasonable delays, including the temporary adjournment of the hearing, may be anticipated should an advisor be removed. A party cannot serve as their own advisor in this circumstance.

The decision-maker shall document any decision to remove an advisor in the written determination regarding responsibility.

Violations of this Policy

For flagrant, multiple, or continual violations of this Rule, in one or more proceedings, advisors may be prohibited from participating in future proceedings at the institution in the advisor role on a temporary or permanent basis.

Evidence of violation(s) of this agreement will be gathered by the Title IX Coordinator, Director of Student Conduct, or a designee of either and presented to the Provost.

The Advisor accused may provide an explanation or alternative evidence in writing for consideration by the Provost. Such evidence or explanation is due within fifteen (15) calendar days of receipt of a notice of a charge of re-disclosure or improper access to records. There shall be no right to a live hearing, oral testimony, or cross-examination.

The Provost shall consider the evidence under a preponderance of the evidence standard and issue a finding in writing and, if the finding is Responsible, shall include a Sanction. The finding shall be issued in writing to all Parties and Advisors (if there is a current case pending) within thirty (30) days

unless extended for good cause.

There is no appeal of this finding. Sanctions shall be higher for intentional re-disclosure of records than for negligent re-discourse. In the event that an Advisor is barred permanently or for a term from serving in the role as Advisor in the future, they may request a review of that bar from the Provost no earlier than three-hundred and sixty-five (365) days after the date of the findings letter.

Relevant Questions Asked in Violation of the Rules of Decorum

Where an advisor asks a relevant question in a manner that violates the Rules, such as yelling, screaming, badgering, or leaning-in to the witness or party's personal space, the question may not be deemed irrelevant by the decision-maker simply because of the manner it was delivered. Under that circumstance, the decision-maker will notify the advisor of the violation of the Rules, and, if the question is relevant, will allow the question to be re-asked in a respectful, non-abusive manner by the advisor (or a replacement advisor, should the advisor be removed for violation of the Rules).

STUDENTS

3052

Religious Beliefs Policy

Fulton-Montgomery Community College (FM) does not discriminate on the basis of religion. FM attracts students from both its local communities and from around the world. In order for the College's students to observe religious holidays that might interfere with established academic requirements, the following policy establishes guidelines for such circumstances:

- Prospective students shall not be refused admission as a student to FM for the reason that they are unable, because of his/her religious beliefs, to attend classes or to participate in any examination, study, clinical or work requirements on a particular day or days.
- Current FM students who are unable, because of their religious beliefs, to attend classes on a particular day or days shall, because of such absence on a particular day or days, be excused from any examination, study, clinical or work requirements for those

days. Documentation may be required to be provided to the faculty member by the student.

- Faculty and administrative officials of FM must make available to each student who is absent from school because of his/her religious beliefs an equivalent opportunity to make up any examination, study, clinical or work requirements which he/she may be missed because of such absence on any particular day or days. Students must make up any missed work in a reasonable time frame, as set forth by the faculty member. Punctually completing make up work is the responsibility of the student. Further, it is the responsibility of the faculty member and/or administrative official to exercise good judgement. No adverse or prejudicial effects shall result to any student utilizing the provisions of this policy.

- Any student who does not feel that any faculty or administrative officials have complied with this policy may contact the Provost/Vice President for Academic Affairs.

Policy Adopted: November 2016

Fulton-Montgomery Community College
Johnstown, NY

STUDENTS

3053

Request for Accommodation Based on a Disability

Fulton-Montgomery Community College, a Community College of the State University of New York, does not discriminate or deny access to an otherwise qualified disabled student on the basis of disability, and students with disabilities may be eligible for reasonable accommodations and/or special services in accordance with the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990.

Students are responsible for communicating their special needs to the Accessibility Services Office. The College is not responsible for making special accommodations for students who have not requested an accommodation and sufficiently documented their disabilities. Also, the College need not modify course or degree requirements considered to be an essential requirement of the program of instruction.

If a student feels that reasonable accommodations have not been provided, there is a grievance procedure that they can follow as outlined in procedures.

Procedures

To request an accommodation on the basis of any disability, whether a physical, psychological or learning disability, a student will take the following steps:

1. Declare his or her disability by submitting appropriate written documentation regarding that disability from a qualified professional to the Accessibility Services Office, located in the Student Development Center.
 - a. In the case of a **physical** or **psychological** disability, this documentation must be current medical documentation from a qualified professional that provides a specific diagnosis, describes symptoms, demonstrates an impact on a major life activity (i.e. learning, walking, and sight), lists recommended educational accommodations, and provides a rationale for each accommodation.
 - b. With respect to documentation of **learning disabilities** or **attention deficit disorder**, Fulton-Montgomery Community College follows the guidelines developed by the Association on Higher Education and Disability (AHEAD) and the Consortium on ADHD Documentation, as adopted and modified by the Educational Testing Service (ETS). These guidelines describe the documentation that is necessary to validate a learning disability or attention-deficit/hyperactivity disorder and the need for reasonable accommodations. In general, testing must be current, comprehensive, and include a specific diagnosis.

The documentation and information regarding the student's disability will remain confidential and will be released only if and to the extent that the student provides the Office of Accessibility Services with written authorization to release such information, or in the unlikely event that disclosure is compelled by legal process. The College reserves the right to request a second professional evaluation (at its own expense) of the student's disability. Based upon the materials submitted by the student and a review by the appropriate College personnel, the College will determine the appropriate reasonable accommodation.

Students are advised to register with the Accessibility Services Office upon enrollment but students may register at any point during their academic program. Accommodations are determined on a semester by semester basis per the request of the student. A reasonable amount of time is required to evaluate the documentation, review the request, and determine and arrange the appropriate accommodations. It should be understood that some accommodations such as alternate textbooks and sign language interpreting services may take several weeks to arrange.

2. The student shall consult with the Coordinator of Accessibility Services to identify what, if any, services will be provided as a reasonable accommodation. The Office for Accessibility Services and the student will each sign the agreed upon letter describing the nature of the accommodation he/she requires as a result of his or her disability. The Coordinator of Accessibility will share the letter with the Alternate Testing Coordinator or other appropriate college personnel (ex. Public Safety, Library, Financial Aid) and the student will follow up to make arrangements for obtaining those accommodations.
 - a. Students will be instructed as to how to use the accommodations in their plan. The Alternate Testing Coordinator is available to teach students how to make test requests, obtain notes, etc. through Blackboard and Starfish. Test requests are to be made at least two (2) business days prior to the time of the test to allow for the Alternate Testing Coordinator and the course instructor time to have the test ready and proctored. Students will be asked to sign a "Learning Center Testing Accommodation Expectation" form indicating understanding of the policies and procedures for those services. Student may seek assistance with the accommodation processes as many times as is needed to become comfortable using the systems in place.

- b. Communication is essential. Please inform the Coordinator of Accessibility Services and/or the Alternate Testing Coordinator if accommodations are unsatisfactory or if changes to the accommodation plan need to be considered.

Grievance Procedure

Any student who alleges that reasonable accommodations have not been provided should immediately notify Coordinator of Accessibility Services and if the concern is not addressed satisfactorily within five (5) business days, should notify the Vice President for Student Affairs in writing.

Within five (5) working days after receipt of the complaint, the Vice President for Student Affairs will initiate an investigation of the complaint. The first stage is informal and the goal is to resolve the issues to the satisfaction of all parties involved. In order to maintain confidentiality, only those individuals with a need to know will be made aware of the complaint.

If after the investigation, the formal complaint is found to be unsubstantiated, the Vice President for Student Affairs will report this in writing to the President of the College that the case is closed. The complainant will be notified in writing of the Vice President's decision.

If after the investigation the formal complaint is substantiated, the Vice President for Student Affairs will report this in writing and the issue will be reported to the President of the College. The complainant will be notified in writing of the Vice President's action and informed that the President of the College will take action on the matter within ten (10) working days.

The complainant may also choose to file a complaint with the Federal Office for Civil Rights or the NYS Division of Human Rights

Policy Adopted: January 2020

Fulton-Montgomery Community College
Johnstown, NY

STUDENTS

3054

Student Identification Cards

Policy Statement

It is the policy of the State University of New York (SUNY) to issue identification cards to students at its campuses. Fulton-Montgomery Community College (FMCC) requires all students to carry a valid FMCC identification card to ensure the safety of students and the entire campus community.

Applicability of the Policy

The identification card (including digital identification cards) must be presented or surrendered upon request of a duly authorized College official, including but not limited to residence hall staff, College Police, Student Affairs staff, and students, contractors, or other staff authorized by the College to supervise campus events, activities, and residence halls. Individuals may be required to reveal their faces to confirm identity when needed to maintain campus safety or security. Upon request, students must show all identifying information shown on the card and/or surrender the card to the requesting official.

Intentional refusal to present or surrender a student identification card upon request by a College official; alteration or falsification of data on an identification card; creation and/or distribution of falsified identification cards; using an identification card to impersonate others; or refusal to reveal one's face to confirm identity; are violations of this policy and may result in disciplinary action.

Procedures

It is the student's responsibility to replace the identification card if it is confiscated, stolen, lost, bent, broken, or worn beyond the point of readability by College officials and/or card readers used by the College. Replacement cards may be obtained at the I.D. Office, in accordance with posted fees.

FMCC identification cards are provided for appropriate identification use and access to buildings and services. The cards are not transferrable and are valid as long as the holder continues their specific affiliation with the campus. A campus identification card is to be used only by the person to whom it is issued. Lost or stolen cards should be reported immediately to the Evans Library.

FMCC is not liable for any charges or other damages incurred if an ID is lost and used by another.

Policy Adopted: September 2024
Johnstown, NY

Fulton-Montgomery Community College

ADMISSIONS POLICY

Fulton-Montgomery Community College is a Community College of the State University of New York and provides college-level education to students from a variety of educational backgrounds. Admission to Fulton-Montgomery Community College is open to all students who have earned a high school diploma or possess a General Education Diploma (GED). Admission is determined without regard to age, race, color, gender, national origin, disability or sexual orientation.

STUDENT ACTIVITIES, CLUBS AND ORGANIZATIONS

Fulton-Montgomery Community College, a Community College of the State University of New York, will provide a program of student activities, student clubs and organizations including a Student Senate Association (SSA). In accordance with the annual Board of Trustees approved Tuition and Fees schedule, the College will charge each student a student activity fee, as approved by the College's Board of Trustees.

The Student Senate Association (SSA) will follow Articles of Governance and established bylaws to insure the proper operation of the organization.

Policy Adopted: September 1999
Policy Reviewed: July 2006, August 2012
Policy Revised: December 2018

Fulton-Montgomery Community College
Johnstown, New York

FREEDOM OF EXPRESSION & ASSEMBLY STUDENT POLICY & PROCEDURES**PURPOSE**

The State University of New York (SUNY) respects and fully supports the rights of free speech guaranteed by the constitutions of the United States and the State of New York. SUNY values the free expression of ideas and supports individuals' right to assemble.

Fulton-Montgomery Community College (FMCC) promulgates this policy to provide meaningful opportunities for members of our community to express their views and to ensure that the time, place, and manner of such expression does not interfere with the safety and security of our campus community or disrupt the regular operations of the campus.

SCOPE

This content-neutral policy is applicable to all FMCC students.

POLICY

FMCC students are guaranteed the rights of free inquiry and expression. Subject to applicable content-neutral policy, students are guaranteed the right to hold public meetings and engage in peaceful and orderly assemblies—including, but not limited to, protests, demonstrations, rallies, vigils, marches, and picketing—in and upon designated public areas of campus grounds and buildings.

FMCC designates the following as public areas for the purpose of peaceful and orderly assemblies: the Quad for outside events; The Large Lounge in the Student Union, Raider's Cove in the Physical Education Building and/or the Event Room in the Allen House.

FMCC will not interfere with orderly assemblies in designated public areas of grounds and buildings unless participants engage in any of the following:

1. Conduct that prevents the orderly administration of college classes, lectures, meetings, interviews, ceremonies, and other campus events or University operations;
2. Conduct that obstructs the free movement of vehicles or of persons, including, but not limited to in any building or facility, inclusive of blocking hallways and doors;

3. Engage in conduct that could foreseeably cause injury or damage to persons or property;
4. Operation of audio amplification equipment in a manner that conflicts with normal College operations or that is deemed injurious to health and safety, or that is in violation of town ordinances;
5. Constructing or erecting structures, whether or not they are anchored, inclusive of screens and/or objects requiring penetration in concrete or grass, or camp on College grounds without authorization from the Dean for Student Affairs, and indoor and outdoor encampment is generally prohibited (see campus policies on tents/camping);
6. Possession and/or ignition of an open flame of any type, including, but not limited to, torches;
7. Assemblies lasting more than one day, duration not to exceed 12 hours in a one-day period, and assemblies between the hours of 10:00PM and 8:00AM are prohibited;
8. Activities that violate the provisions of [SUNY Policy 3653, Rules for the Maintenance of Public Order](#); and
9. Activities that violate the provisions of any other applicable campus policy.

In addition, the following activities are strictly prohibited:

1. Entry into any private office of an administrative officer, member of faculty, or staff member, or entry into any other college area that is not authorized, without permission;
2. Occupation of a building after it is normally; and
3. Obstruction of any roadways running through or adjoining the campus grounds.

All individuals participating in protests and demonstrations are required to provide a form of College issued or government issued identification upon request from a College official.

FMCC takes compliance with this policy very seriously. Students should expect that violations of this policy will result in disciplinary action under the College's Student Code of Conduct, up to and including interim suspension, suspension, and expulsion.

PROCEDURES

FMCC respects and supports students' efforts to exercise their rights to free speech and assembly. The Division of Student Affairs has designated the Office of Student Involvement to provide the appropriate support for the successful implementation of these events. Following College procedure will ensure a safe and effective assembly activity. The College will make

every effort to respond affirmatively to all requests to engage in assembly activity. However, content-neutral consideration must be given to the time, place, and manner of the assembly activity to ensure the health and safety of the participants and the noninterference with authorized College business, activities, or events.

Services: To help ensure the safety of participants and the protection of the rights of all members of the campus community, the College can provide services to active student organizations/student requests such as location, safety, crowd control, sound equipment (unless prohibited in certain areas as per Campus rules), site preparation/cleanup, and/or other such facilities or services it deems necessary ("Services").

Request for Services

1. For assemblies where the need for Services is reasonably foreseeable, event organizers shall, within 10 business days prior to the planned event, submit a written Request for Services, as follows:
 - A. The written request should contain the name of the sponsor/organizer, the proposed location and any other Services sought, the date and time of the planned assembly, and the number of persons expected to participate.
 - B. The request should be submitted to: Coordinator of Student Involvement.
 - C. A professional staff member from the Student Affairs Office will promptly respond to the request for Services after receipt of the written request but no later than three (3) business days prior to the proposed date of the planned event.
 - D. A professional staff member will review the request and work with the sponsor/organizer to accommodate requests and determine a reasonable time, place, and manner for the assembly activity.
 - E. While every attempt will be made to accommodate all requests, some modifications to the assembly activity request may be required due to the availability of the proposed time and place of the activity. The Coordinator of Student Involvement will inform the sponsor/organizer of these modifications and provide guidance as the assembly activity is planned.
 - F. In the event that the proposed assembly activity is planned in direct response to a current event, the Office of Student Involvement realizes that it may not be possible to submit a request in advance. In such cases, the event organizer should contact the Coordinator as soon as possible in order to promptly coordinate the assembly activity, where reasonably possible.
2. **No Services Required:** Assemblies requiring no Services, or for which the need for Services is not reasonably foreseeable or necessary as described above, may take place without any prior notification by the sponsors and/or organizers. However, conformity with the specific campus rules noted above is required. Organizers who are unsure of whether their planned assembly requires Services are encouraged to contact the appropriate office

designated in sub-paragraph (1)(c) above for guidance. Event organizers who do not request necessary services that were reasonably foreseeable as being needed may be subject to discipline.

Policy Adopted: September 2024

Fulton-Montgomery Community
Johnstown, New York

STUDENT FINANCIAL ASSISTANCE

Fulton-Montgomery Community College, a Community College of the State University of New York, as an accredited post-secondary institution, is eligible to participate in federal, state, local, and private financial aid programs.

The College will provide a comprehensive program of student financial aid that shall include grants, loans, scholarships, and employment opportunities to eligible students.

Policy Adopted: December 1999
Policy Reviewed: July 2006
Policy Revised: August 2012

Fulton-Montgomery Community College
Johnstown, New York

STUDENT RESPONSIBILITY FOR DEBTS

Fulton-Montgomery Community College, a Community College of the State University of New York, holds students responsible for all debts incurred while attending College. In the event that a student does not pay for any charges incurred, the College may deny a student the opportunity to register for classes, receive grade reports, official transcripts, or conferring of a degree or certificate until such outstanding charges are resolved.

ACADEMIC ADVISING

Fulton-Montgomery Community College, a Community College of the State University of New York, confers degrees and certificates. The College will provide a system for comprehensive academic advising for students that is designed to assist them in meeting their educational, career and personal goals and will, where appropriate, lead successfully to the completion of a degree or certificate.

STUDENT USE OF DRUGS AND ALCOHOL

Fulton-Montgomery Community College, a community college of the State University of New York, has a policy on the use of alcohol and drugs that applies to all students and their visitors and guests.

The service, distribution, sale, possession and/or consumption of alcoholic beverages on the Fulton-Montgomery Community College (FMCC) campus, or at any student-related event on campus are strictly prohibited. College sponsored events may not include the purchase or sale of alcohol as part of the official program.

Unlawful behavior involving alcohol such as underage drinking, public intoxication, drinking and driving and manufacturing and/or distribution of alcohol on the campus of Fulton-Montgomery Community College, or at any on- or off-campus event is strictly prohibited and subject to action through the Student Code of Conduct.

The manufacture, distribution, sale, purchase, possession and/or use of any illegal drugs or controlled substances on the Fulton-Montgomery Community College campus or at any student-related on- or off-campus event is strictly prohibited.

A violation of this policy shall be considered a violation of the Fulton-Montgomery Community College Student Code of Conduct and will be subject to disciplinary action. The disciplinary sanctions are outlined in the Student Code of Conduct.

College-level sanctions imposed under this policy do not diminish or replace the penalties available under applicable federal, state or local laws.

Specific exceptions of this policy may be approved by the President or his/her designee.

Policy Adopted: June 2010
Policy Revised: August 2012
Policy Revised: March 2021
Policy Revised: December 2022

Fulton-Montgomery Community College
Johnstown, New York

ARTICLE**SERIES 4000****PERSONNEL****POLICY****POLICY NUMBER**

Civil Rights, Title IX, and Equal Employment	4000
Sexual Harassment	4010
FMCC Policies on Sexual Violence Prevention and Response	4020
Child Protection Policy	4030
President Emeritus	4100
Professor Emeritus	4101
Non-Teaching Professional Position Emeritus	4102
Administrator Emeritus	4103
Presidential Review	4110
Acting President	4120
Hiring of Full-Time Employees	4200
Interim Hires	4210
Retirement Programs	4220
Health Insurance for Retirees	4230
Solicitation on Campus	4240
Nepotism	4250
Consensual/Romantic Relationship	4251
Suspected Misconduct and Dishonesty	4260
Employee Recognition and Recognition Funds	4270
Conflict of Interest Policy	4280
Drug and Alcohol Free Workplace	4290
Managerial Confidential Secretaries/Secretary to the President	4300
Personnel Policy Manual	
Administrative Personnel Policies	4400

Civil Rights, Title IX, and Equal Employment Policy
Civil Rights Discrimination Complaint/Grievance Policy Procedure
for Students and Employees

In compliance with applicable federal, state and local laws, Fulton Montgomery County Community College (the “College” or “FMCC”) does not discriminate on the basis of race, color, religion, gender, gender characteristics and expression, actual or perceived gender identity, actual or perceived national origin, citizenship, actual or perceived gender identity, ancestry, age, medical condition, marital/familial status, pregnancy, sexual orientation, physical or mental disability status, status as a victim of a sexual assault, relationship violence, and/or stalking, genetic predisposition and carrier status, previous convictions as specified by law, military or veteran status, or any other characteristics protected by applicable law (the “Protected Characteristics”), in any aspect of its admissions or financial aid programs, educational programs and related activities, or with respect to employment and advancement in employment. The College is committed to providing a work and learning environment that is free from discrimination and harassment by anyone based on an individual’s Protected Characteristics, or because the individual has engaged in activity protected by federal or state laws prohibiting discrimination.

Sexual harassment is a form of discrimination that subjects an individual to inferior conditions of employment or education due to their gender, gender identity, gender expression (perceived or actual), and/or sexual orientation. Sexual Harassment is often viewed simply as a form of gender-based discrimination, but College recognizes that discrimination can be related or affected by other identities beyond gender. Under the New York State Human Rights Law, it is illegal to discriminate based on race, color, religion, actual or perceived national origin, citizenship, actual or perceived gender identity, ancestry, age, medical condition, marital/familial status, pregnancy, sexual orientation, physical or mental disability status, status as a victim of a sexual assault, relationship violence, and/or stalking, genetic predisposition and carrier status, previous convictions as specified by law, military or veteran status, or any other characteristics protected by applicable law. Our different identities impact our understanding of the world and how others perceive us. For example, an individual’s race, ability, or immigration status may impact their experience with gender discrimination in the workplace.

Inquiries about Title IX may be referred to the College’s Title IX Coordinator, the U.S. Department of Education’s Office for Civil Rights, or both. The College’s Title IX Coordinator is the Chief Student Affairs Officer Arlene Spencer, aspencer@fmcc.edu 518-736-3622 ext. 8100.

The College’s nondiscrimination policy and grievance procedures can be located at <https://fmcc.edu/non-discrimination-policy>.

To report information about conduct that may constitute sex discrimination or make a Complaint of sex discrimination under Title IX, please refer to <https://fmcc.edu/non-discrimination-policy>.

The Human Resource Administrator has been designated by the College to coordinate its efforts to comply with applicable nondiscrimination laws and regulations. Questions or concerns regarding the scope and application of the College's Civil Rights Discrimination Complaint/Grievance Policy Procedure for Students and Employees (the "Policy") should be directed to Jessica Berju, Human Resources Administrator at jberju@fmcc.edu.

In the absence of, or as an alternative to, the Human Resource Administrator, questions or concerns about this Policy may also be addressed to:

Employees/Students

Chief Student Affairs Officer, Arlene Spencer at aspencer@fmcc.edu

The Title IX Coordinators, Human Resource Administrator, Jessica Berju at jberju@fmcc.edu designated by the College to coordinate its efforts to comply with Title IX and Article 129-b of the New York State Education Law. Questions or concerns regarding sexual harassment and misconduct may also be directed to the Public Safety Office, Deputy Davida Capece at dcapece@fmcc.edu.

The College designated employees to coordinate its efforts to comply with reasonable accommodation obligations towards qualified individuals with disabilities. Questions or concerns regarding reasonable accommodation of individuals with disabilities may be directed to the following:

Employees

Human Resource Administrator, Jessica Berju at jberju@fmcc.edu

Students

Coordinator of Accessibility, Counseling and Alternative Testing Services, Katherine Norman at knorman@fmcc.edu

I. Applicability of this Policy

This Policy applies to all students, employees, applicants for employment, interns, whether paid or unpaid, contractors and persons conducting business, regardless of immigration status, with FMCC. In the remainder of this document, insofar as it relates to sexual harassment, the term "employees" refers to this collective group. This Policy also applies to anyone who is (or is employed by) a contractor, subcontractor, vendor, consultant, or anyone providing services in our workplace, including independent contractors, gig workers, temporary workers, and persons providing equipment repair, cleaning services, or other services through a contract with FMCC. For the remainder of this policy, we will use the term "covered individual" to refer to those individuals who are not direct employees of FMCC.

In addition to this Policy, FMCC has also adopted a Title IX Grievance Policy (the “Title IX Policy”) available here: <https://fmcc.edu/non-discrimination-policy>

NOTE: If a complaint is filed that alleges conduct that could constitute Title IX Sexual Harassment, as defined under the Title IX Grievance Procedure (<https://fmcc.edu/non-discrimination-policy>), the Title IX Grievance Procedure will apply, and the Complaint, Investigation, and Disciplinary Procedure under this Policy DOES NOT apply. However, if the Formal Title IX Complaint is dismissed, FMCC may still choose to investigate the alleged Discriminatory Practices under this policy, if FMCC determines that the alleged Discriminatory Practices may potentially violate this Policy.

NOTE: If a complaint alleges conduct that could constitute Sexual Misconduct, as defined under the FMCC Policy on Sexual Misconduct Prevention and Response (the “Sexual Misconduct Policy”) (<https://fmcc.edu/non-discrimination-policy>), and no Formal Complaint is filed, or the Formal Complaint is dismissed, the Investigation and Disciplinary Procedures under the Sexual Misconduct Policy will apply, and the Complaint, Investigation, and Disciplinary Procedure in this Policy DOES NOT apply. However, if the Sexual Misconduct investigation is dismissed, FMCC may still choose to investigate the alleged Discriminatory Practices under this Policy, if FMCC determines that the alleged Discriminatory Practices may potentially violate this Policy.

Goals of this Policy:

Sexual harassment and discrimination are against the law. After reading this policy, employees, students, and covered individuals will understand their right to a campus free from harassment. Employees, students, and covered individuals will also learn what harassment and discrimination look like, what actions they can take to prevent and report harassment, and how they are protected from retaliation after taking action. The policy will also explain the investigation process into any claims of harassment. Employees, students, and covered individuals are encouraged to report sexual harassment or discrimination by filing a complaint internally with FMCC. Employees, students, and covered individuals can also file a complaint with a government agency or in court under federal, state, or local anti-discrimination laws. To file a complaint with the New York State Division of Human Rights, please visit <https://dhr.ny.gov/complaint>. To file an employment complaint with the United States Equal Employment Opportunity Commission, please visit <https://www.eeoc.gov/filing-charge-discrimination>.

II. Harassment and Discrimination Prevention

1. Unlawful harassment is unacceptable. Any employee, student, or covered individual who engages in unlawful harassment, discrimination, or retaliation will be subject to action, including appropriate discipline for employees and students. In New York, harassment does not need to be severe or pervasive to be illegal. Employees, students, and covered

individuals should not feel discouraged from reporting harassment because they do not believe it is bad enough, or conversely because they do not want to see a colleague fired over less severe behavior. Just as harassment can happen in different degrees, potential discipline for engaging in harassment will depend on the degree of harassment and might include education and counseling. It may lead to suspension or termination when appropriate.

2. Retaliation is prohibited. Any employee, student, or covered individual that reports an incident of harassment or discrimination, provides information, or otherwise assists in any investigation of a sexual harassment or discrimination complaint is protected from retaliation. No one should fear reporting harassment if they believe it has occurred. So long as a person reasonably believes that they have witnessed or experienced such behavior, they are protected from retaliation. Any employee or student of FMCC who retaliates against anyone involved in a harassment or discrimination investigation will face disciplinary action, up to and including termination. All employees, students, and covered individuals who believe they have been subject to such retaliation should inform a supervisor, manager, the Title IX Coordinator, or the Human Resource Administrator. All employees, students and covered individuals who believe they have been a target of such retaliation may also seek relief from government agencies, as explained below in the section on Legal Protections.
3. Discrimination of any kind is a violation of our policies, is unlawful, and may subject FMCC to liability for the harm experienced by targets of discrimination. Harassers may also be individually subject to liability and employers or supervisors who fail to report or act on harassment may be liable for aiding and abetting such behavior. Employees at every level who engage in harassment or discrimination, including managers and supervisors who engage in harassment or discrimination or who allow such behavior to continue, will be penalized for such misconduct. Students who engage in harassment or discrimination will also be penalized for this behavior.
4. FMCC will conduct a prompt and thorough investigation that is fair to all parties. An investigation will happen whenever management receives a complaint about discrimination or harassment, or when it otherwise knows of possible discrimination or harassment occurring. FMCC will keep the investigation confidential to the extent possible. If an investigation ends with the finding that discrimination or harassment occurred, FMCC will act as required. In addition to any required discipline, FMCC will also take steps to ensure a safe work or educational environment for the employee(s) or student(s) who experienced the discrimination or harassment. All employees, including managers and supervisors, are required to cooperate with any internal investigation of discrimination or harassment.

5. All employees, students and covered individuals are encouraged to report any harassment or behaviors that violate this Policy. All employees and students will have access to a complaint form to report harassment and file complaints. Use of this form is not required. For anyone who would rather make a complaint verbally, or by email, these complaints will be treated with equal priority. An employee, student, or covered individual who prefers not to report harassment to FMCC may instead report harassment to the New York State Division of Human Rights and/or the United States Equal Employment Opportunity Commission. Complaints may be made to both FMCC and a government agency.

Managers and supervisors are required to report any complaint that they receive, or any harassment that they observe or become aware of, to the Title IX Coordinator or the Human Resource Administrator.

6. This Policy applies to all employees, students, and covered individuals, such as contractors, subcontractors, vendors, consultants, or anyone providing services to FMCC, and all must follow and uphold this Policy. This Policy must be provided to all employees in person or digitally through email upon hiring and will be posted prominently in all work locations. For those offices operating remotely, in addition to sending the Policy through email, it will also be available on the organization's shared network.

III. Definitions

A. Prohibited Harassment

Prohibited harassment is a form of discrimination that is unlawful under federal, state, and (where applicable) local law and is unacceptable. Prohibited harassment does not need to be severe or pervasive to be illegal. It can be any harassing behavior that rises above petty slights or trivial inconveniences, based on a legally protected characteristic. The New York State Human Rights Law specifies that whether harassing conduct is considered petty or trivial is to be viewed from the standpoint of a reasonable victim of discrimination with the same protected characteristics.

Prohibited harassment on the basis of a Protected Characteristic, or any other protected basis, includes behavior such as: (1) verbal, written, and/or electronically transmitted conduct, including threats, epithets, derogatory comments, or slurs; (2) visual conduct, including derogatory posters, photographs, cartoons, drawings, or gestures; and (3) physical conduct, including assault, unwanted touching, or blocking normal movement. FMCC will not tolerate any such harassment.

In general, prohibited harassment can consist of spoken, written, and/or electronically transmitted words, signs, jokes, pranks, intimidation, or physical violence based on the protected characteristics of an employee or student, which alters the work or educational environment of that employee or student. While the most well-known type of prohibited harassment is sexual

harassment, applicable laws and/or this Policy also prohibit harassment based on any of the Protected Characteristics. In addition, retaliatory harassment resulting from an individual's protected activity (i.e., opposition to prohibited discrimination or participation in a statutory complaint process) is also prohibited.

Discrimination and harassment are prohibited on FMCC's campus. Harassment of students who are working or studying outside the campus proper is prohibited. The College is committed to preventing and correcting all such harassment, not just harassment which is severe or pervasive enough to provide the basis for a claim under federal or state law.

B. Sexual Harassment

The College is committed to maintaining a campus free from sexual harassment. Sexual harassment is a form of gender-based discrimination that is unlawful under federal, state, and (where applicable) local law, and may subject the College to liability. Sexual harassment includes harassment on the basis of sex, sexual orientation, self-identified or perceived sex, gender expression, gender identity, and the status of being transgender. Sexual harassment is not limited to sexual contact, touching, or expressions of a sexually suggestive nature. Sexual harassment includes all forms of gender discrimination including gender role stereotyping and treating employees, students, or covered individuals differently because of their gender. Any possible sexual harassment will be investigated whenever the College receives a complaint or otherwise knows of possible sexual harassment occurring. Those who engage in sexual harassment will be subject to disciplinary action. Supervisors who fail to report sexual harassment will also be subject to disciplinary action.

Understanding gender diversity is essential to recognizing sexual harassment because discrimination based on sex stereotypes, gender expression and perceived identity are all forms of sexual harassment. The gender spectrum is nuanced, but the three most common ways people identify are cisgender, transgender, and non-binary. A cisgender person is someone whose gender aligns with the sex they were assigned at birth. Generally, this gender will align with the binary of male or female. A transgender person is someone whose gender is different from the sex they were assigned at birth. A non-binary person does not identify exclusively as a man or a woman. They might identify as both, somewhere in between, or completely outside of the gender binary. Some may identify as transgender, but not all do. Respecting an individual's gender identity is a necessary first step in establishing a safe workplace or education environment.

Sexual harassment is unlawful when it subjects an individual to inferior terms, conditions, or privileges of employment. Harassment does not need to be severe or pervasive to be illegal. It can be any harassing behavior that rises above petty slights or trivial inconveniences. Every instance of harassment is unique to those experiencing it, and there is no single boundary between petty slights and harassing behavior. However, the Human Rights Law specifies that whether harassing conduct is considered petty or trivial is to be viewed from the standpoint of a reasonable victim of discrimination with the same protected characteristics. Generally, any behavior in which an employee, student or covered individual is treated worse because of their gender (perceived or

actual), sexual orientation, or gender expression is considered a violation of FMCC's policy. The intent of the behavior, for example, making a joke, does not neutralize a harassment claim. Not intending to harass is not a defense. The impact of the behavior is what counts.

Under federal and state law, sexual harassment includes unwelcome conduct which is either directed at an individual because of that individual's gender identity or expression (perceived or actual), or is of a sexual nature, when:

- Such conduct is made either explicitly or implicitly a term or condition of employment or education,
- Submission to or rejection of such conduct is used as the basis for employment or academic decisions. Such decisions for employees can include what shifts and how many hours an employee might work, project assignments, as well as salary and promotion decisions; or
- Such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance or creating an intimidating, hostile or offensive work or educational environment, even if the complaining individual is not the intended target of the sexual harassment.

However, this Policy prohibits all forms of sexual harassment, regardless of whether the harassment may give rise to a legal claim under Title IX or state or federal law. A single incident of inappropriate sexual behavior may be enough to rise to the level of sexual harassment, depending on the severity of such incident.

There are two main types of sexual harassment:

- Behaviors that contribute to a **hostile work or education environment** include, but are not limited to, words, signs, jokes, pranks, intimidation, or physical violence which are of a sexual nature, or which are directed at an individual because of that individual's sex, gender identity, or gender expression. Sexual harassment also consists of any unwanted verbal or physical advances, sexually explicit derogatory, or discriminatory statements which an employee, student, or covered individual finds offensive or objectionable, causes the individual discomfort or humiliation, or interferes with the employee's job or educational performance.
- Sexual harassment also occurs when a person in authority tries to trade job benefits or educational benefits for sexual favors. This can include hiring, promotion, continued employment or any other terms, conditions, or privileges of employment. This is also called **quid pro quo** harassment. To avoid the potential for quid pro quo sexual harassment, it is the policy of the College that no sexual relationship should exist between supervisor (or evaluator) and subordinate, including between student workers and their supervisors, or between faculty and students. If a prohibited sexual relationship develops, the supervisory

authority and/or responsibility for grading, evaluation, etc. should be promptly transferred to another individual.

Prohibited sexual harassment also includes, but is not limited to the following:

- Physical assaults of a sexual nature,¹ such as:
 - Rape, sexual battery, molestation, or attempts to commit these assaults; and
 - Intentional or unintentional physical conduct which is sexual in nature, such as touching, pinching, patting, grabbing, brushing against another employee's body, or poking another employees' body.
- Unwanted sexual advances, propositions or other sexual comments, such as:
 - Requests for sexual favors;
 - Subtle or obvious pressure for unwelcome sexual activities;
 - Sexually oriented gestures, noises, remarks, jokes or comments about a person's sexuality or sexual experience, or romantic history which create a hostile educational or work environment;
 - Spoken, written, and/or electronically transmitted verbal remarks of a sexual nature (whether directed to an individual or a group). Remarks made over virtual platforms and in messaging apps when employees are working remotely, or students are learning remotely can create a similarly hostile work or educational environment;
 - Sexually explicit, offensive, or sex-based jokes and comments;
 - Sexual or gender-based comments about an individual or an individual's appearance; and
 - Repeated requests for date or romantic gestures, including gift giving.
- Sex stereotyping, which occurs when someone's conduct or personality traits are judged based on other people's ideas or perceptions about how individuals of a particular sex should act or look:
 - Remarks regarding an employee's or student's gender expression, such as wearing a garment typically associated with a different gender identity; or
 - Asking students or employees to take on traditionally gendered roles, such as asking a woman to serve meeting refreshments when it is not part of, or appropriate to, her job duties.

¹ Any complaint of sexual assault, including rape or fondling, will be addressed pursuant to the Sexual Misconduct Policy and/or the Title IX Policy.

- Sexual or discriminatory displays or publications anywhere in the workplace or educational environment, such as:
 - Displaying pictures, posters, calendars, graffiti, objects, promotional material, reading materials, or other materials that are sexually demeaning, pornographic. This includes such sexual displays on workplace computers or cell phones and sharing such displays while in the workplace.
 - This also extends to the virtual or remote workspace and can include having such materials visible in the background of one's home during a virtual meeting.
- Sexual exploitation occurs when an individual takes non-consensual, unfair, or abusive advantage of another for their own advantage, benefit, entertainment or profit. Examples include, but are not limited to:
 - Non-consensual photo or video taking or sharing, or audio taping of sexual activity or other intimate parts of another person without knowledge or consent.
 - Voyeurism is the intentional use or installation of an imaging device to surreptitiously view, broadcast or record a person dressing or undressing or the sexual or intimate parts of such a person at a place and time when such person has a reasonable expectation of privacy, without such person's knowledge or consent.
 - The disrobing or exposure of another person without their consent.
- Hostile actions taken against an individual because of that individual's sex, sexual orientation, gender identity, or gender expression, such as:
 - Interfering with, destroying, or damaging a person's workstation, tools or equipment, or otherwise interfering with the individual's ability to perform the job;
 - Sabotaging an individual's work;
 - Bullying, yelling, or name-calling;
 - Intentional misuse of an individual's preferred/chosen name or pronouns;
 - Creating different expectations for individuals based on their perceived identities;
 - Dress codes that place more emphasis on women's attire;
 - Leaving parents/caregivers out of meetings.

Sexual harassment is neither limited by the gender of either party, nor limited to supervisor-subordinate or teacher-student relationships. Sexual harassment can occur between male and female students and employees, or between persons of the same sex. Sexual harassment that occurs because the victim is transgender is also unlawful.

Any employee, student, or covered individual who feels harassed is encouraged to report the behavior so that any violation of this policy can be corrected promptly. Any harassing conduct, even a single incident, can be discrimination and is covered by this policy.

C. Retaliation

It is a violation of federal and state law and this policy for any employee or student to retaliate against any student or employee for engaging in any protected activity under the Violence Against Women Act, the Clery Act, Title VI, Title VII, Title IX, the New York State Human Rights Law, the ADA, the Rehabilitation Act, the ADEA, and other federal and state civil rights laws. Retaliation resulting from an individual's protected activity (i.e., opposition to prohibited discrimination or participation in a statutory complaint process) is also prohibited. This prohibition applies to anyone on the College campuses.

Unlawful retaliation can be any action, more than trivial, that would have the effect of dissuading a reasonable employee or student from making or supporting a charge of harassment or any other practices forbidden by the Law. Actionable retaliation can occur after the individual is no longer employed by, or enrolled at, the College. This can include, for example, giving an unwarranted negative reference for a former employee or former student.

This includes retaliating against a student or employee who opposes a discriminatory practice, makes a good faith complaint about harassment and/or discrimination, or furnishes information or participates in any manner in an investigation of such a complaint.

Retaliation includes any conduct directed at someone because they engaged in such protected activity, which might deter a reasonable student or employee from making or supporting a charge of harassment or discrimination.

Examples of retaliation may include, but are not limited to:

- Demotion, termination, denying accommodations, reduced hours, or the assignment of less desirable shifts;
- Publicly releasing personnel files;
- Refusing to provide a reference or providing an unwarranted negative reference;
- Labeling an employee as "difficult" and excluding them from projects to avoid "drama";
- Undermining an individual's immigration status; or
- Reducing work responsibilities, passing over for a promotion, or moving an individual's desk to a less desirable office location;

Protected activity can include any of the following:

- filing a complaint of discrimination or harassment, either internally with the College, or with any anti-discrimination agency,

- testifying or assisting in a proceeding or investigation involving discrimination or harassment,
- opposing discrimination or harassment by making a verbal or informal complaint to management, or by simply informing a supervisor or manager of discrimination or harassment,
- complaining that another student or employee has been discriminated against or harassed,
- reporting that another employee or student has been sexually harassed or discriminated against,
- encouraging another student or employee to report discrimination or harassment, and
- requesting an accommodation for a disability or a religious practice.

Retaliation is unlawful and will not be tolerated. Any individual found to have engaged in retaliation will be subject to disciplinary action, up to and including, termination of employment and/or dismissal from the College.

Even if the alleged harassment does not turn out to rise to the level of a violation of law, the individual is protected from retaliation if the person had a good faith belief that the practices were unlawful. However, the retaliation provision is not intended to protect persons making intentionally false charges of harassment.

Any employee or student who becomes aware of retaliation against a student or employee should contact Human Resources Administrator and/or Chief Student Affairs Officer. If a student or employee believes that they have been retaliated against, the student or employee may file a complaint under this Policy.

D. Reasonable Accommodations

The College conforms to the requirements of the American with Disabilities Act of 1990, Section 504 of the Rehabilitation Act of 1973, and other applicable federal, state and local laws, which prohibit discrimination of students and employees with disabilities. Disabilities may include, but are not limited to, visual impairments, mobility and orthopedic impairments, hearing impairments, chronic medical conditions, learning disabilities, and psychological or emotional disorders.

Qualified persons with disabilities may be entitled to reasonable accommodations in the workplace and/or academic program. Employees and job applicants are encouraged to inform Human Resources Administrator of any disability that may require a reasonable accommodation to allow them to perform the essential functions of their position, or the position to which they are applying, and to suggest reasonable accommodations. Students in need of modifications to their academic programs may request reasonable academic modifications from Coordinator of Accessibility, Counseling and Alternative Testing Services, Kathy Norman at knorman@fmcc.edu.

Parties may request reasonable accommodations for disclosed disabilities to the Title IX Coordinator at any point before or during the Title IX Grievance Procedure that do not fundamentally alter the Procedure. The Title IX Coordinator will not affirmatively provide disability accommodations that have not been specifically requested by the Parties, even where the Parties may be receiving accommodations in other institutional programs and activities.

Medical documentation may be required to assist in this process. Any information obtained by the College related to an individual's physical or mental disabilities will be treated as confidential medical information. The College will review and individually assess each accommodation request in accordance with applicable law.

If a student or employee believes that they have been denied a reasonable accommodation, the student or employee may file a complaint under this Policy.

Supportive Measures

If a Complainant or Respondent discloses a disability, the Title IX Coordinator may consult, as appropriate, with the Office for Student Success to provide support to students with disabilities to determine how to comply with Section 504 of the Rehabilitation Act of 1973 in the implementation of any supportive measures.

E. Confidentiality

The College will, to the extent possible, maintain confidentiality with respect to complaints of discrimination and prohibited harassment. However, there is no such thing as an "unofficial" or "informal" complaint of Discriminatory Practices. Once the College or its supervisors become aware of a complaint, the College is required by law to take action consistent with this policy.² These actions may require disclosure of the allegations to the extent necessary to conduct a complete and thorough investigation.

F. Preponderance of the Evidence

The standard of evidence used to evaluate a report of prohibited harassment or discrimination is a "preponderance of the evidence." Under this standard, a determination must be made on the basis of whether it is more likely than not that the respondent student or employee violated this, Policy.

IV. Scope of the Policy

² College employees who learn of alleged discrimination or prohibited harassment as a result of privileged communications with a student (e.g., through a counseling relationship) are exempted from this requirement.

A. Where Can Unlawful Harassment Occur?

Unlawful harassment is not limited to the physical workplace itself or to the FMCC campus. It can occur while employees or students are traveling for business or at employer or industry sponsored events or parties. Calls, texts, emails, and social media usage by employees, students, or covered individuals can constitute unlawful harassment, even if they occur away from FMCC's premises, on personal devices, or during non-work hours.

Harassment can occur when employees are working remotely from home as well, or when students are taking remote classes. Any behaviors outlined above that leave an employee or student feeling uncomfortable, humiliated, or unable to meet their job requirements constitute harassment even if the employee, covered individual, or student is at home when the harassment occurs. Harassment can happen on virtual meeting platforms, in messaging apps, and after working hours between personal cell phones.

B. Who Can be a Target of Unlawful Harassment?

Harassment can occur between any individuals, regardless of their protected status. Harassment does not have to be between members of different protected statuses, such as the opposite sex or gender. New York Law protects employees, students, and all covered individuals described earlier in this policy. Harassers can be anyone on campus. A supervisor, or supervisee, or a coworker can all be harassers. Anyone else on campus can also be harassers including a student, a faculty member, an independent contractor, contract worker, vendor, client, customer, painter, constituent, or visitor.

Harassment does not happen in a vacuum and discrimination can be impacted by biases and an individual's protected statuses. For example:

1. Placing different demands or expectations on black female employees than white female employees can be both racial and gender discrimination;
2. An individual's immigration status may lead to perceptions of vulnerability and increased concerns around illegal retaliation for reporting harassment; or
3. Past experiences as a survivor of domestic or sexual violence may lead an individual to feel re-traumatized by someone's behaviors in the workplace.

Individuals bring personal history with them to the workplace and educational environment that might impact how they interact with certain behavior. It is especially important for all employees and students to be aware of how words or actions might impact someone with a different experience than their own in the interest of creating a safe and equitable workplace or educational environment.

V. Complaint, Investigation, and Disciplinary Procedure for Employees and Students

1. Reporting Prohibited Discriminatory Practices

Everyone must work toward preventing harassment, but leadership matters. Supervisors and managers have a special responsibility to make sure employees feel safe at work and that workplaces are free from harassment or discrimination.

Any employee, student, or covered individual is encouraged to report harassing or discriminatory behavior to a supervisor, manager, the Title IX Coordinator, or the Human Resource Administrator. If the Human Resource Administrator is not available, or if an employee or student does not feel comfortable reporting discrimination or prohibited harassment to the Human Resource Administrator, they may also report it to the Acting Chief Student Affairs Officer or another senior officer at FMCC.

Reports of discrimination and harassment may be made verbally or in writing. A written complaint form is attached to this policy (as **Exhibit A**) if an employee, student, or covered individual would like to use it, but the complaint form is not required. Individuals who are reporting discrimination or harassment on behalf of others may use the complaint form and should note that it is on another's behalf. A verbal or otherwise written complaint (such as an email) on behalf of oneself or another is also acceptable.

Employees, students, and covered individuals who believe they have been a target of harassment may at any time seek assistance in additional available forums, as explained below in the section on Legal Protections.

If the alleged conduct may constitute sexual harassment under Title IX, the Title IX Coordinators will inform the complainant of his or her right to file a Formal Complaint under the  Title IX Grievance Procedure. If a Formal Complaint is filed, the Title IX Grievance Procedure will apply, and this Complaint, Investigation, and Disciplinary Procedure **DOES NOT** apply. However, if the Formal Title IX Complaint is dismissed, FMCC may still choose to investigate the alleged Discriminatory Practices under this Policy, if FMCC determines that the alleged Discriminatory Practices may potentially violate this policy.

If a complaint alleges conduct that could constitute Sexual Misconduct, as defined under the Sexual Misconduct Policy, the Investigation and Disciplinary Procedures for Sexual Misconduct Cases Handled Outside of the Title IX Grievance Procedure will apply, and this Complaint, Investigation, and Disciplinary Procedure **DOES NOT** apply. However, if the Sexual Misconduct investigation is dismissed, FMCC may still choose to investigate the alleged Discriminatory Practices under this policy, if FMCC determines that the alleged Discriminatory Practices may potentially violate this policy.

However, even if an employee or student chooses not to file a complaint with the College, if the College knows, or reasonably should know, about a suspected incident of Discriminatory Practices,

the College may promptly investigate to determine what occurred and then take appropriate steps to resolve the situation.

In addition to filing a complaint with the College, an employees or students who believes they are the victim of Discriminatory Practices may file a complaint with federal, state or local agencies as explained in detail in Section V, below.

2. Reporting Obligations for College Employees

Supervisors and managers have a responsibility to prevent harassment and discrimination. All supervisors and managers who receive a complaint or information about suspected Discriminatory Practices, observe what may be Discriminatory Practices or for any reason suspect that Discriminatory Practices are occurring, are required to report such suspected Discriminatory Practices to the Human Resource Administrator or Title IX Coordinator. Managers and supervisors should not be passive and wait for an employee to make a claim of harassment. If they observe such behavior, they must act.

In addition to being subject to discipline if they engaged in Discriminatory Practices themselves, supervisors and managers will be subject to discipline for failing to report suspected Discriminatory Practices or otherwise knowingly allowing Discriminatory Practices to continue after they know about it.

Supervisors and managers will also be subject to discipline for engaging in retaliation.

All employees of the College are responsible for keeping the College's working and learning environment free from Discriminatory Practices. For that reason, if an employee observes or otherwise learns of conduct which may constitute Discriminatory Practices, the employee must report the conduct to the Human Resource Administrator, even if the employee is not the victim of that conduct.

While supervisors and managers have a responsibility to report harassment and discrimination, supervisors and managers must be mindful of the impact that harassment and a subsequent investigation has on victims. Being identified as a possible victim of harassment and questioned about harassment and discrimination can be intimidating, uncomfortable and re-traumatizing for individuals. Supervisors and managers must accommodate the needs of individuals who have experienced harassment to ensure the workplace is safe, supportive, and free from retaliation for them during and after any investigation.

Bystander Intervention

Any employee or student witnessing harassment as a bystander is encouraged to report it. A supervisor or manager that is a bystander is **required** to report it. There are five standard methods of bystander intervention that can be used when anyone witnesses harassment or discrimination and wants to help.

1. A bystander can interrupt the harassment by engaging with the individual being harassed and distracting them from the harassing behavior;
2. A bystander who feels unsafe interrupting on their own can ask a third party to help intervene in the harassment;
3. A bystander can record or take notes on the harassment incident to benefit a future investigation;
4. A bystander might check in with the person who has been harassed after the incident, see how they are feeling and let them know the behavior was not ok; and
5. If a bystander feels safe, they can confront the harassers and name the behavior as inappropriate. When confronting the harassment, physically assaulting an individual is never an appropriate response.

Though not exhaustive, and dependent on the circumstances, the guidelines above can serve as a brief guide of how to react when witnessing harassment on FMCC's premises. Any employee who witnesses harassment as a bystander is encouraged to report it. A supervisor or manager that is a bystander to harassment is required to report it.

3. Initial Assessment of the Complaint

When the College becomes aware that Discriminatory Practices may have occurred, it is obligated by law to take prompt and appropriate action. Failure to do so is considered a violation of this Policy.

Once a complaint of Discriminatory Practices has been made either in writing or orally, or observed Discriminatory Practices have been reported, the Human Resource Administrator will make an initial assessment regarding the validity of the complaint.

All complaints or information of Discriminatory Practices will be investigated, whether that information was reported in verbal or written form. An investigation of any complaint, information, or knowledge of suspected discrimination, harassment, or retaliation will be prompt, thorough, and started and completed as soon as possible. All individuals involved, including those making a claim, witnesses, and alleged harassers deserve a fair and impartial investigation.

It is a fundamental responsibility of FMCC faculty members and other employees to abide by and act in accord with FMCC policy. FMCC faculty members, other employees, and students may be required to cooperate in an investigation of suspected discrimination or prohibited harassment under this Policy as needed. Failure of an FMCC faculty member or other employee to cooperate with an investigation under this Policy may lead to disciplinary action, up to and including termination or dismissal from FMCC. FMCC faculty members, other employees, and students who participate in an investigation will not be retaliated against. FMCC will take disciplinary action against anyone engaging in retaliation against employees or students who file complaints, support another's complaint, or participate in harassment investigations.

FMCC recognizes that participating in a harassment investigation can be uncomfortable and has the potential to retraumatize an employee or student. Those receiving claims and leading

investigations will handle complaints and questions with sensitivity towards those participating.

Unless the complaint is determined to be invalid (e.g. erroneous information, failure to state a claim, mistaken identity, etc.), Human Resource Administrator, or designee (who must be trained in discrimination and harassment, and this Policy), will initiate an investigation.

If Human Resource Administrator or their adequately trained designee is involved in the alleged Discriminatory Practices, the President will be responsible for choosing an adequately trained designee to conduct the investigation. If the complaint is against the President or it would be inappropriate for the Human Resource Administrator or the President to choose an adequately trained designee to conduct the investigation, then the Chair of the Board of Trustees will make this designation.

4. Consent to Investigate

If the Title IX Coordinator or designee determines an investigation is required, the Title IX Coordinator or designee may seek consent from reporting individuals *prior* to conducting an investigation.

If a reporting individual does not consent to the request to initiate an investigation and/or subsequently withdraws their complaint, the Title IX Coordinator or designee will determine, in their sole and complete discretion, whether to proceed with an investigation by weighing the complainant's request against FMCC's obligation to provide a safe, nondiscriminatory environment for all members of its community. The Title IX Coordinator or designee's decision to proceed with an investigation under this Policy is not subject to challenge.

Even if an employee or student victim never files a complaint with FMCC, if FMCC knows, or reasonably should know, about a suspected incident of discrimination or prohibited harassment, the Title IX Coordinator or designee may choose to investigate the incident in the Title IX Coordinator's discretion.

5. Interim/Supportive Measures

While the investigation is being conducted, interim measures will be available to end or limit contact between the complainant and the respondent. Interim measures may include:

1. support services (victim advocacy, housing assistance, academic support, counseling, health and mental health services, legal assistance);
2. changing work assignments and situations (for employees);
3. changing living arrangements, course schedules, assignments, or test schedules (for students);

4. providing increased monitoring, supervision, or security; and
5. providing an escort.

No complainant is required to take advantage of these interim measures, but the College provides them in an effort to offer help and support. Such interim measures can be requested by a complainant or respondent, by contacting Human Resource Administrator. The College will protect the confidentiality of accommodations or protective measures provided to a complainant or respondent, to the extent that doing so will not impair the College's ability to provide the accommodations or protective measures.

6. Informal Resolution

Procedures for Entering and Exiting Informal Resolution Process

Parties who do not wish to proceed with an investigation and instead seek FMCC's assistance to resolve allegations of discrimination and harassment, may elect to proceed with an informal resolution process. Informal resolution options include but are not limited to administrative resolution and mediation. Informal resolution is not an option to resolve allegations that an employee harassed a student.

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

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

7. The Investigation

The investigator will conduct a complete, thorough, and impartial investigation, to determine whether, by a preponderance of the evidence, the alleged Discriminatory Practices occurred.

In investigating the complaint, Human Resource Administrator, or designee, shall:

1. Conduct a prompt review of the allegations, assess the appropriate scope of the investigation, and take any interim actions (for example, instructing the individual(s) about whom the complaint was made to refrain from communications with the individual(s) who reported the harassment), as appropriate.

2. If the complaint is verbal, request that the individual complete the complaint form in writing. If the person reporting prefers not to fill out the form, prepare a complaint form or equivalent documentation based on the verbal reporting.
3. Meet with the appropriate individuals and review all appropriate records that bear on the case.
4. Provide a Notice of Allegations to the complainant and respondent. Such notice will occur as soon as practicable after FMCC receives a complaint, if there are no extenuating circumstances. The notice will include information regarding the informal resolution process discussed in the preceding section.
5. Discuss the allegations in the complaint with the complainant and respondent at separate meetings, and provide the complainant and respondent with equal opportunities to identify witnesses and present evidence supporting their respective positions at these meetings. Preserve all relevant documents, including but not limited to e-mails, electronic communications, and phone records. The Title IX Coordinator or designee will consider and implement appropriate document request, review, and preservation measures, including for electronic communications.
6. Provide the complainant and the respondent with the same opportunities for a non-attorney support person or non-attorney advisor of their choice throughout the process, including any meeting, conference, hearing or other procedural action.
7. Interview all parties involved, including any identified or known non-party witness (es).
8. Create a written report of the investigation which contains the following:
 - A list of all documents reviewed, along with a detailed summary of relevant documents;
 - A list of names of those interviewed, along with a detailed summary of their statements;
 - A timeline of events;
 - A summary of prior relevant incidents, reported or unreported; and
 - The basis for the decision and final resolution of the complaint, together with any corrective action(s).
9. Keep the written documentation and associated documents in a secure and confidential location.
10. Promptly notify the individual(s) who reported the harassment and the individual(s) about whom the complaint was made that the investigation has been completed and implement any corrective actions identified in the written document; and, if accused is an employee, notify the senior officer for the unit in which the accused is employed (or the President if

the accused is a senior officer), or, if the accused is a student, the Chief Student Affairs Officer.

11. The parties will be informed, in writing, of the outcome, including the finding, the sanctions (if any) and the rationale therefore. Delivery of this outcome will not be delayed to either party, and should occur as nearly simultaneously as possible, without unnecessarily bringing those in conflict into close proximity to each other. All parties will be informed of their potential rights to exercise a request for appeal, where applicable.
12. Inform the individual(s) who reported of the right to file a complaint or charge externally.

The time necessary to complete an investigation will vary depending upon the facts of a particular case. In most cases, investigations will be completed within a reasonably prompt manner, and no longer than thirty (30) business days of the Title IX Coordinator or designee's receipt of a complaint. Provided, however, that the investigation process may be extended for good cause, including but not limited to the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

8. Following the Investigation

FMCC takes complaints of discrimination and prohibited harassment with the greatest seriousness. For that reason, if, following the investigation, the Title IX Coordinator/EEO Specialist or other trained investigator concludes that it is more likely than not that the accused student or employee violated this Policy, FMCC will pursue strong disciplinary action.

If the Title IX Coordinator or other trained investigator concludes it is more likely than not the accused student or employee violated the Policy, the Title IX Coordinator or other trained investigator will refer the matter to the Human Resource Administrator (for employees other than faculty), the Chief Academic Affairs Officer (for faculty), or the Chief Student Affairs Officer (for students) to determine whether to pursue disciplinary sanctions, within five (5) business days of the investigator's determination.

- Further information regarding internal disciplinary proceedings for students can be found in the Student Code of Conduct. Student disciplinary sanctions for a violation(s) of this Policy may include but are not limited to: verbal warning, written reprimand, probation, restrictions, suspension and expulsion.
- Further information regarding internal disciplinary proceedings for employees other than faculty can be found in the Employee Handbook and/or in any applicable collective bargaining agreement with FMCC. The Human Resources Administrator shall determine appropriate disciplinary sanctions for employees, subject to the terms of the Employee Handbook and any applicable collective bargaining agreement. Employee disciplinary

sanctions for a violation(s) of this Policy may include but are not limited to: verbal warning, written reprimand, suspension without pay, and termination.

- Further information regarding internal disciplinary proceedings for faculty members can be found in the Faculty Handbook. The Chief Academic Affairs Officer shall determine appropriate disciplinary sanctions for all faculty, subject to the terms of the Faculty Manual. Faculty disciplinary sanctions for a violation(s) of this Policy may include but are not limited to: verbal warning, written reprimand, suspension without pay, and termination.

Internal disciplinary proceedings for cases of harassment and discrimination are fair and impartial, include timely notice of meetings and timely and equal access to information and evidence that will be used, and are conducted by unbiased decision makers who have no conflict of interest. The proceedings are completed within a reasonably prompt, designated timeframe.

Following any internal disciplinary proceeding for cases of harassment and discrimination, the complainant or accuser and accused will be provided with simultaneous written notice of the result of the proceeding, including any sanctions imposed that relate directly to the complainant or accuser, and the rationale for the result and complainant or accuser-related sanctions.

If the investigation reveals that discrimination and/or prohibited harassment did occur, FMCC will take all appropriate remedial measures necessary to end such conduct, prevent any such future conduct, and correct any personnel or academic decisions made which are related to the prohibited conduct. Remedies may include, but are not limited to, continuing or commencing any of the above-listed “interim measures.” These remedies are separate from, and in addition to, any interim measures that may have been provided prior to the conclusion of the investigation. Such measures can be requested by a complainant or accuser, by contacting the Human Resource Administrator (for employees) or the Chief Student Affairs Officer (for students).

Engaging in discrimination, prohibited harassment, or retaliation may also lead to civil and/or criminal action under state or federal law. Any employee who, in violation of this Policy, engages in discrimination, prohibited harassment or retaliation, is acting outside the scope of his or her employment and may be personally liable for such actions and their consequences. In the event legal proceedings are commenced against such an employee, FMCC may decline to provide legal, financial or other assistance.

9. Discipline

The College takes complaints of discrimination and prohibited harassment with the greatest seriousness. For that reason, if, following the investigation, Human Resource Administrator or other trained investigator concludes that it is more likely than not that the respondent student or employee violated this Policy, the College will pursue strong disciplinary action through its own

channels.

Internal disciplinary proceedings for cases of harassment and discrimination are fair and impartial, include timely notice of meetings and timely and equal access to information and evidence that will be used, and are conducted by unbiased decision makers who have no conflict of interest. The proceedings are completed within a reasonably prompt, designated timeframe. Further information regarding internal disciplinary proceedings for students can be found in the Student Code of Conduct. Further information regarding internal disciplinary proceedings for employees can be found in any applicable employee handbook or contract and/or in any applicable collective bargaining agreement with the College.

Following any internal disciplinary proceeding for cases of harassment and discrimination, the complainant and respondent will be provided with simultaneous written notice of the result of the proceeding, including any sanctions imposed that relate directly to the complainant, and the rationale for the result and complainant -related sanctions.

Discipline for incidents of discrimination and harassment may take a variety of forms, depending upon the circumstances of a particular case. Among the disciplinary sanctions which may be imposed on students are the following: verbal warning, written reprimand, probation, restrictions, suspension and expulsion. Among the disciplinary sanctions which may be imposed on employees are: verbal warning, written reprimand, suspension without pay, and termination. The full range of student disciplinary penalties is set forth in the Student Code of Conduct. Employee disciplinary penalties are set forth in any applicable employee handbook or contract and/or in any applicable collective bargaining agreement with the College.

All parties will be simultaneously informed of their potential rights to exercise a request for an appeal of the disciplinary determination, where applicable, under the Student Code of Conduct, any applicable employee handbook or contract, and/or collective bargaining agreement with the College. Should any change in outcome occur prior to finalization, all parties will be timely informed in writing and will be notified when the results of the resolution process become final.

Engaging in discrimination, prohibited harassment, or retaliation may also lead to civil and/or criminal action under state or federal law. Any employee who, in violation of this Policy, engages in discrimination, prohibited harassment or retaliation, is acting outside the scope of his or her employment and may be personally liable for such actions and their consequences. In the event legal proceedings are commenced against such an employee, the College may decline to provide legal, financial or other assistance.

VI. Legal Protections and External Remedies

Discriminatory Practices are not only prohibited by FMCC but may also be prohibited by state, federal, and, where applicable, local law.

Aside from the internal process at FMCC, employees, students, and covered individuals may also choose to pursue legal remedies with the following governmental entities. While a private attorney

is not required to file a complaint with a governmental agency, you may seek the legal advice of an attorney.

In addition to those outlined below, employees in certain industries may have additional legal protections.

A. State Human Rights Law (HRL)

The Human Rights Law (HRL), codified as N.Y. Executive Law, art. 15, § 290 et seq., applies to all colleges and employers in New York State with regard to discrimination and harassment, and protects students, employees, paid or unpaid interns and non-employees, regardless of immigration status. A complaint alleging violation of the Human Rights Law may be filed either with the Division of Human Rights (DHR) or in New York State Supreme Court.

Complaints of harassment filed with DHR may be filed with DHR any time within three **(3)** years of the harassment. If an individual did not file at DHR, they can sue directly in state court under the HRL, within three **(3)** years of the alleged harassment. An individual may not file with DHR if they have already filed a HRL complaint in state court.

Complaining internally to FMCC does not extend your time to file with DHR or in court. The one year or three years is counted from date of the most recent incident of harassment.

You do not need an attorney to file a complaint with DHR, and there is no cost to file with DHR.

DHR will investigate your complaint and determine whether there is probable cause to believe that the discrimination or harassment have occurred. Probable cause cases are forwarded to a public hearing before an administrative law judge. If discrimination or harassment is found after a hearing, DHR has the power to award relief, which varies but may include requiring your employer to take action to stop the harassment, or redress the damage caused, including paying of monetary damages, attorney's fees and civil fines.

DHR's main office contact information is: NYS Division of Human Rights, One Fordham Plaza, Fourth Floor, Bronx, New York 10458. You may call (718) 741-8400 or visit: www.dhr.ny.gov. Contact the Division via TDD/TTY at 718-741-8300.

Contact DHR at (888) 392-3644 or visit dhr.ny.gov/complaint for more information about filing a complaint. The website has a complaint form that can be downloaded, filled out, notarized and mailed to DHR. You may now also email a complaint form to complaints@dhr.ny.gov or fax it to 718-741-8322. The website also contains contact information for DHR's regional offices across New York State.

The contact information for the DHR office covering Fulton and Montgomery Counties is as follows:

New York State Division of Human Rights ("DHR")
Agency Building 1, 2nd Floor
Empire State Plaza

Albany, New York 12220
Telephone: (518) 474-2705 (or 2707)
eFax: (518) 473-2955
Director: Victor DeAmelia
Email: InfoAlbany@dhr.ny.gov
Online: <https://dhr.ny.gov/complaint>

B. Civil Rights Act of 1964

The United States Equal Employment Opportunity Commission (EEOC) enforces federal anti-discrimination laws, including Title VII of the 1964 federal Civil Rights Act (codified as 42 U.S.C. § 2000e et seq.). An employee can file a complaint with the EEOC anytime within 300 days from the harassment. There is no cost to file a complaint with the EEOC. The EEOC will investigate the complaint, and determine whether there is reasonable cause to believe that discrimination has occurred, at which point the EEOC will issue a Right to Sue letter permitting the individual to file a complaint in federal court. The EEOC may also try to reach a voluntary settlement with the employer.

The EEOC does not hold hearings or award relief, but may take other action including pursuing cases in federal court on behalf of complaining parties. Employees may obtain relief in mediation, settlement or conciliation. In addition, federal courts may award remedies if discrimination is found to have occurred. In general, private employers must have at least 15 employees to come within the jurisdiction of the EEOC.

An employee alleging discrimination at work can file a "Charge of Discrimination." The EEOC has district, area, and field offices where complaints can be filed. Contact the EEOC by calling 1-800-669-4000 (TTY: 1-800-669-6820), 1-800-669-6820 (TTY for Deaf/Hard of Hearing callers only), 1-844-234-5122 (ASL Video Phone for Deaf/Hard of Hearing callers only), or visiting their website at www.eeoc.gov or via email at info@eeoc.gov.

If an individual filed an administrative complaint with DHR, DHR will file the complaint with the EEOC to preserve the right to proceed in federal court.

Contact information for the EEOC office with jurisdiction over Fulton and Montgomery Counties is as follows:

United States Equal Employment Opportunity Commission ("EEOC"):
Buffalo Local Office
Olympic Towers
300 Pearl Street, Suite 450
Buffalo, NY 14202
Director: Maureen Kielt
Regional Attorney: Jeffrey Burnstein
Phone: 1-800-669-4000
Fax: 716-551-4387

TTY: 1-800-669-6820
ASL Video Phone: 844-234-5122
Online: <https://www.eeoc.gov/employees/howtofile.cfm>

C. Local Protections

Many localities enforce laws protecting individuals from harassment and discrimination. An individual should contact the county, city or town in which they live to find out if such a law exists.

D. Office of Civil Rights

In addition, an employee or student who believes they are the victim of Discriminatory Practices may file a complaint with the United States Department of Education's Office for Civil Rights ("OCR").

The contact information for OCR's headquarters is as follows:

400 Maryland Avenue, SW, Washington, DC 20202-1100
Customer Service Hotline #: (800) 421-3481
Fax: (202) 453-6012
TTY#: (800) 877-8339
Email: OCR@ed.gov
Web: <http://www.ed.gov/ocr>

The OCR office with jurisdiction over New York State can be contacted as follows:

United States Department of Education's Office for Civil Rights ("OCR"):
New York Office
Office for Civil Rights
U.S. Department of Education
32 Old Slip, 25th Floor
New York, NY 10005-2500
Telephone: 646-428-3800
Fax: 646-428-3843
E-mail: OCR.NewYork@ed.gov
Online: <https://www2.ed.gov/about/offices/list/ocr/complaintintro.html>

Complaints may be filed to OCR by:

- Mail or Facsimile: Complainants may mail or send a complaint by facsimile a letter to the New York Office address and fax listed above.
- E-mail: Complainants may file a complaint to the following e-mail address: ocr@ed.gov.

- Online: Complainants may file a complaint with OCR using OCR's electronic complaint form at the following website: <https://www2.ed.gov/about/offices/list/ocr/complaintintro.html>.

Information about how to file a complaint in other languages can be accessed here: <https://www2.ed.gov/about/offices/list/ocr/docs/howto-index.html>.

E. Contact the Local Police Department

If the harassment involves unwanted physical touching, coerced physical confinement or coerced sex acts, the conduct may constitute a crime. Contact the local police department.

VII. Conclusion

The policy outlined above is aimed at providing employees, students, and covered individuals an understanding of their right to a discrimination and harassment free workplace. All employees should feel safe at work. Though the focus of this policy is at times on sexual harassment and gender discrimination, the New York State Human Rights Law protects against discrimination in several protected classes including race, color, religion, actual or perceived national origin, citizenship, actual or perceived gender identity, ancestry, age, medical condition, marital/familial status, pregnancy, sexual orientation, physical or mental disability status, status as a victim of a sexual assault, relationship violence, and/or stalking, genetic predisposition and carrier status, previous convictions as specified by law, military or veteran status, or any other characteristics protected by applicable law. The prevention policies outlined above should be considered applicable to all protected classes.

EXHIBIT A

**FULTON MONTGOMERY COUNTY COMMUNITY COLLEGE
DISCRIMINATION/HARASSMENT COMPLAINT FORM**

Name of Complainant: _____
(Please Print)

Date Filed: _____

Home Address: _____
(Street)

(City) (State) (Zip Code)

Home Telephone: _____ - _____ - _____
(Area Code)

Signature: _____

Work Address: _____

(City) (State) (Zip Code)

Email: _____

Work Telephone: _____ - _____ - _____
(Area Code)

Position Held: _____

Immediate Supervisor's Name: _____

Title: _____

Supervisor's Work Phone: _____

Supervisor's Work Address: _____

Basis for filing complaint of discrimination: Circle appropriate classification(s)

RACE	ACTUAL OR PERCEIVED NATIONAL ORIGIN
COLOR	MILITARY OR VETERAN STATUS
SEX	SEXUAL ORIENTATION
GENDER	GENDER CHARACTERISTICS AND EXPRESSION
MARITAL STATUS	RELATIONSHIP VIOLENCE VICTIM
RETALIATION	PREVIOUS CONVICTION OR ARREST
DISABILITY	GENETIC PREDISPOSITION OR CARRIER
AGE	VICTIM OF SEXUAL ASSAULT OR STALKING
RELIGION	ACTUAL OR PERCEIVED GENDER IDENTITY
FAMILIAL STATUS	

Date(s)/Time(s) alleged discrimination/harassing act occurred:

Place of alleged discriminatory/harassing act:

Person(s) who committed alleged act(s) of discrimination/harassment: _____

Witnesses to the alleged discrimination/harassing act:

Description of Events Leading to Filing a Complaint (*add additional pages as necessary*):

[illegible]

Person assisting complainant (Optional):

Name: _____ Title: _____

Organization: _____

Address: _____
 (Street) (City) (State) (Zip
 Code)

Telephone: _____ - _____ - _____
(Area Code)

Relief Sought by Complainant:



FULTON-MONTGOMERY COMMUNITY COLLEGE

www.fmcc.edu

Johnstown, New York

SEXUAL MISCONDUCT PREVENTION AND RESPONSE POLICY

A College of the State University of New York

Sponsored by the Counties of Fulton and Montgomery

POLICY ON SEXUAL MISCONDUCT PREVENTION AND RESPONSE 74**I. Purpose and Scope 74****II. Definitions 75****III. Alcohol and/or Drug Use Amnesty for Students in Sexual Misconduct Cases 81****IV. Campus Climate Assessment 81****V. Students' Bill of Rights 82****VI. Rights of Reporting Individuals 83****VII. Options for Confidentially Disclosing Sexual Misconduct 89****VIII. Student Onboarding and Ongoing Education 91****IX. Interplay Between the Criminal Justice Process & the Sexual Misconduct Process Under the Policy 96****X. Sexual Misconduct Investigation Process & Procedures 97****XI. Student Discipline for Sexual Misconduct 101****XII. Employee Discipline for Sexual Misconduct 112****XIII. Prohibition of Retaliation 112****XIV. Institutional Crime Reporting 113****XV. FMCC Partnerships 114****Addendum A 114**

POLICY ON SEXUAL MISCONDUCT PREVENTION AND RESPONSE

I. Purpose and Scope

A. Purpose: FMCC is committed to creating and maintaining an educational environment free from all forms of sexual misconduct (defined below). Any act involving sexual misconduct will not be tolerated. These acts have a real impact on the lives of victims. They not only violate a person's feelings of trust and safety, but they can also substantially interfere with a student's education or an employee's employment. It is the collective responsibility of all members of the FMCC community to foster a safe and secure campus environment.

B. Scope:

1. Who: This Policy applies to all members of the FMCC community, including students, faculty, staff, visitors, independent contractors, and other third parties who are on campus and involved in an incident of sexual misconduct (this can be someone who witnessed an incident or who wishes to report an incident on behalf of another).
2. What: This Policy prohibits all forms of sexual misconduct (as defined below). This broad term includes, but is not limited to, acts of nonconsensual sexual activity, relationship violence, sexual assault and stalking. Please refer to the Definitions section for a complete list of terms and prohibited acts.

This Policy covers incidents of sexual misconduct occurring between individuals in various types of relationships. These include, but are not limited to, student to student, staff to staff, faculty member to faculty member, visitor/contracted employee to faculty/staff, faculty member to student, staff to student, supervisor to subordinate, and coach to student athlete. These may be acts committed by or against an individual or group. These acts may be committed by a stranger, an acquaintance, or someone with whom the victim has a social, romantic, or intimate relationship. These acts may be committed by or against any individual, regardless of sexual orientation or gender identity.

3. Where: This Policy covers conduct that takes place at FMCC. This includes any building or property owned or controlled by FMCC and used in direct support of, or in a manner related to, the College's educational purposes, including dining halls and public property within or immediately adjacent to and accessible from campus. This also includes any building or property owned or controlled by a student organization that is officially recognized by FMCC and any building or property not within the same reasonably contiguous geographic area of FMCC that supports or relates to the College's educational purposes and is frequently used by students.

This Policy also covers conduct that takes place off-campus that may have a nexus to the FMCC community. This Policy also applies to incidents that occur while a student is studying abroad. When the conduct involves students or employees from two or more institutions, FMCC will work collaboratively with the other institutions to address the conduct, provided that the collaboration complies with the Family Educational Rights Privacy Act ("FERPA").

This Policy covers all educational, extracurricular, athletic, or other campus programs. This Policy also covers all campus and College-related activities, including, but not limited to, student

organizations, community organizations with student and/or faculty participation, and all other educational or extracurricular events hosted by or at FMCC.

- C. Nondiscrimination: FMCC applies the protections set forth in this Policy regardless of race, color, national origin, religion, creed, age, disability, sex, gender identity or expression, sexual orientation, familial status, pregnancy, predisposing genetic characteristics, military status, domestic violence victim status, criminal conviction, or other protected characteristics. Students may exercise civil rights and practice religion without interference by FMCC's investigation or conduct processes.

II. Definitions

- A. "Affirmative Consent": Affirmative Consent is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression.
- Consent to any sexual activity between or with any party does not necessarily constitute consent to any other sexual act.
 - Whether through words or actions that clearly display consent, each party must affirmatively consent to participating in each sexual activity. Consenting to one type of sexual activity is not blanket consent to any and all types of sexual activity.
 - Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
 - Consent may be initially given but withdrawn at any time.
 - Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity.
 - Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, being under the age of consent, or if an individual otherwise cannot consent. Minors who cannot consent under New York's laws covering age of consent are considered incapacitated. Under New York law, the age of consent is 17 years old. Students and employees are encouraged to review New York State Penal Law Article 130 for additional details regarding New York's age of consent.
 - Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent. This does not mean that individuals cannot affirmatively consent to sexual activity or contact when they have been drinking or using drugs, however. Such individuals may still affirmatively consent through words or actions that clearly indicate interest in engaging in the activity.
 - Incapacitation is to be determined by a student conduct or investigation process based on available evidence, acknowledging that in almost no cases will scientific evidence of alcohol or drug level (such as a breathalyzer taken at the time of the assault) be available. There is no single standard or number of drinks that leads to incapacitation. This level varies for different people, and may depend in part on their age, gender, height, weight, metabolism and whether and how much they have recently eaten.

- Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.
 - When consent is withdrawn or can no longer be given, sexual activity must stop.
 - Consent can “no longer be given” when a party to a sexual act or sexual contact initially consents to the activity, but during the course of the activity falls asleep or otherwise becomes unconscious or incapacitated. At that point, the other party must stop the sexual activity or contact.
- B. “Appellate Board” – for any student disciplinary proceeding that involves a charge of sexual misconduct (as defined below), the Appellate Board will contain any three or more persons authorized by the Dean for Student Affairs to consider an appeal from an investigator’s determination that no sexual misconduct violation occurred, and from the Student Life Hearing Board’s final determination regarding responsibility and/or sanctions. Such Appellate Board shall be appointed by the Dean for Student Affairs and consists of a panel of student(s), administrator(s), or faculty member(s) (chosen from a list of FMCC faculty who have been designated to serve in this capacity). Members of the Appellate Board receive annual training in conducting investigations of sexual misconduct, the effects of trauma, impartiality, the rights of the respondent, including the right to a presumption that the respondent is “not responsible” until a finding of responsibility is made, the Policy, and other issues related to sexual assault, relationship violence and stalking.
- C. “Bystander” shall mean a person who observes a crime, impending crime, conflict, potentially violent or violent behavior, or conduct that is in violation of rules or policies of an institution.
- D. “Code of Conduct” shall mean the written policies adopted by FMCC governing student behavior, rights, and responsibilities while such student is matriculated in the Institution.
- E. “Confidentiality” may be offered by an individual who is not required by law to report known incidents of sexual assault or other crimes to institution officials, in a manner consistent with State and Federal law, including but not limited to 20 U.S.C. 1092(f) and 20 U.S.C. 1681(a). Licensed mental health counselors, medical providers and pastoral counselors are examples of institution employees who may offer confidentiality.
- The obligation to keep information in confidence is inherent for certain FMCC professionals on campus, such as health care providers, licensed social workers, licensed psychologists, and pastoral and professional counselors (including licensed mental health counselors). Many off-campus resources such as rape crisis centers are also confidential, and with the exception of certain acts of child abuse and imminent threats. Individuals working in such organizations have no obligation to report information back to the reporting individual’s campus.
 - It is important to note that all Responsible Employees at FMCC (as defined below) are required to report known incidents of sexual assault or other crimes, so they are NOT confidential resources. However, even FMCC officers and employees who cannot guarantee confidentiality will maintain your privacy to the greatest extent possible. The information you provide to a nonconfidential resource will be relayed only as necessary for the Title IX Coordinator to investigate and/or seek a resolution.
- F. “Crime of Violence” shall be defined as murder, manslaughter, rape, fondling, incest, statutory rape, robbery, aggravated assault, burglary, motor vehicle theft, and arson, as defined below.
- Criminal Homicide - Manslaughter by Negligence: The killing of another person through gross negligence.
 - Criminal Homicide - Murder and Nonnegligent Manslaughter: The willful (nonnegligent) killing of one human being by another.

- 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 age or because of his/her 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.
 - Statutory Rape: Sexual intercourse with a person who is under the statutory age of consent. Under New York law, the age of consent is 17 years old. See New York State Penal Law Article 130.
 - Robbery: The taking or attempting to take anything of value from the care, custody, or control of a person or persons by force or threat of force or violence and/or by putting the victim in fear.
 - Aggravated Assault: An unlawful attack by one person upon another for the purpose of inflicting severe or aggravated bodily injury. This type of assault usually is accompanied by the use of a weapon or by means likely to produce death or great bodily harm. (It is not necessary that injury result from an aggravated assault when a gun, knife, or other weapon is used which could and probably would result in serious personal injury if the crime were successfully completed.
 - Burglary: The unlawful entry of a structure to commit a felony or a theft. For reporting purposes this definition includes: unlawful entry with intent to commit a larceny or felony; breaking and entering with intent to commit a larceny; housebreaking; safecracking; and all attempts to commit any of the aforementioned.
 - Motor Vehicle Theft: The theft or attempted theft of a motor vehicle.
 - Arson: Any willful or malicious burning or attempt to burn, with or without intent to defraud, a dwelling house, public building, motor vehicle or aircraft, personal property of another, etc.
- G. “Institution” shall mean any College or university chartered by the regents or incorporated by special act of the legislature that maintains a campus in New York.
- H. “Nonconsensual Sexual Activity” occurs when “sexual activity” (as defined below) is perpetrated against a victim without his or her “affirmative consent” (as defined above).
- I. “Privacy” – may be offered by an individual when such individual is unable to offer confidentiality under the law but shall still not disclose information learned from a reporting individual or bystander to a crime or incident more than necessary to comply with applicable laws, including informing appropriate FMCC officials.
- Although most FMCC employees are not confidential resources, they can still offer “privacy.” This means that an employee may have to share information pursuant to federal or state law or College policy with certain other FMCC employees, but they will not share the private information beyond what is required or needed to comply with law and policy, and will otherwise limit re-disclosure as much as possible.
 - Privacy of the records specific to any investigation is maintained in accordance with New York State law and, with respect to student records, the federal Family Educational Rights and Privacy Act of 1974 (FERPA) statute. Any public release of information to comply with the timely warning provisions of the Jeanne Clery Act (Clery Act) will not release the names of victims or information that could easily lead to a victim’s identification.
- J. “Relationship Violence” shall be defined to include “domestic violence” and “dating violence” as defined under federal and state law.
- Generally, relationship violence is a pattern of coercive behaviors that serve to exercise control and power in an intimate relationship. The coercive and abusive behaviors can be physical,

sexual, psychological, verbal and/or emotional in nature. Intimate partner abuse can occur in relationships of the same or different genders; between current or former intimate partners who have dated, lived together, or been married.

- Under the federal Clery Act regulations:
 - domestic violence is defined as felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or New York family violence laws, or by any other person against an adult or youth victim who is protected from that person's acts under New York domestic or family violence laws.
 - dating violence is defined as 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 is determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition, dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.
- Under New York law:
 - domestic violence is an act which would constitute a violation of the penal law, including, but not limited to acts constituting disorderly conduct, harassment, aggravated harassment, sexual misconduct, forcible touching, sexual abuse, stalking, criminal mischief, menacing, reckless endangerment, kidnapping, assault, attempted murder, criminal obstruction or breaching or blood circulation, or strangulation; and such acts have created a substantial risk of physical or emotional harm to a person or a person's child. Such acts are alleged to have been committed by a family member. The victim can be anyone over the age of sixteen, any married person or any parent accompanied by his or her minor child or children in situations in which such person or such person's child is a victim of the act.
 - "Family or household member" means persons related by consanguinity or affinity; persons legally married to one another; person formerly married to one another regardless of whether they still reside in the same household; persons who have a child in common regardless of whether such persons are married or have lived together at any time; Unrelated persons who are continually or at regular intervals living in the same household or who have in the past continually or at regular intervals lived in the same household; Persons who are not related by consanguinity or affinity and who are or have been in an intimate relationship regardless of whether such persons have lived together at any time.
 - Factors that may be considered in determining whether a relationship is an "intimate relationship" include, but are not limited to: the nature or type of relationship regardless of whether the relationship is sexual in nature; the frequency of interaction between the persons; and the duration of the relationship. Neither a casual acquaintance nor ordinary fraternization between two individuals in business or social contexts shall be deemed to constitute an "intimate relationship"; Any other category of individuals deemed to be a victim of domestic violence as defined by the office of children and family services in regulation. Intimate relationship status shall be applied to teens, lesbian/gay/bisexual/transgender, and elderly individuals, current and formerly married and/or dating heterosexual individuals who were, or are in an intimate relationship.

- “Parent” means natural or adoptive parent or any individual lawfully charged with a minor child’s care or custody.
 - o dating violence - New York State does not specifically define “dating violence.” However, under New York Law, intimate relationships are covered by the definition of domestic violence when the act constitutes a crime and is committed by a person in an “intimate relationship” with the victim.
- K. “Reporting Individual” shall encompass the terms victim, survivor, complainant, claimant, witness with victim status, and any other term used by FMCC to reference an individual who brings forth a report of a violation.
- L. “Respondent” shall mean a person accused of a violation.
- M. “Responsible Employee” shall be defined as any employee: who has the authority to take action to redress sexual misconduct (as defined below); who has been given the duty of reporting incidents of sexual misconduct or any other misconduct by students to the Title IX Coordinator; or whom a student could reasonably believe has this authority or duty. At FMCC, Responsible Employees include the following:
- President, Dean of Academic Affairs, Dean for Student Affairs, and Director of Business Affairs;
 - Human Resources Manager;
 - Public Safety Office;
 - Anyone else a student would reasonably believe is a Responsible Employee, including deans, advisors, club advisors, coaches, mentors, and program directors; and
 - In some instances, faculty members (when overseeing an event, supervising an away trip, or serving in some other role that would cause a student to reasonably believe that the faculty member is a Responsible Employee).

A Responsible Employee must report to the College’s Title IX coordinator, or other appropriate College designee, all relevant details about the alleged sexual misconduct that the student or another person has shared and that FMCC will need to determine what occurred and to resolve the situation. This includes the names of the alleged perpetrator (if known), the student who experienced the alleged sexual misconduct, and other students involved in the alleged Misconduct, as well as relevant facts, including the date, time, and location.

Before a student reveals information that he or she may wish to keep confidential, a Responsible Employee will make every effort to ensure that the student understands: (i) the employee’s obligation to report the names of the alleged perpetrator and student involved in the alleged sexual misconduct, as well as relevant facts regarding the alleged incident (including the date, time, and location), to the Title IX coordinator or other appropriate College officials, (ii) the student’s option to request that the College maintain his or her confidentiality, which the Title IX coordinator will consider, and (iii) the student’s ability to share the information confidentially with counseling, advocacy, health, mental health, or sexual-assault-related services.

- N. “Sexual Activity” has the same meaning as “sexual act” and “sexual contact” as provided in 18 U.S.C. § 2246(2) and 18 U.S.C. § 2246(3). Therefore, the term “sexual activity” includes the following:
- contact between the penis and the vulva or the penis and the anus, and for purposes of this definition contact involving the penis occurs upon penetration, however slight;
 - contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus;

- the penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person;
- the intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 16 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or
- the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

Individuals must obtain affirmative consent (as defined above) prior to engaging in any of the activity referenced above.

O. “Sexual Assault” as defined under both federal and state law.

- Under the federal Clery Act regulations, the term “sexual assault” means an offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI’s UCR program and as set forth in Appendix A to the Clery Act regulations (34 CFR § 668.46). In Appendix A to the Clery Act regulations, these terms are defined as follows:
 - 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, forcibly and/or against that person’s will; or, not forcibly or against the person’s will where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.
 - Incest – sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
 - Statutory Rape – sexual intercourse with a person who is under the statutory age of consent. Under New York law, the age of consent is 17 years old. See New York State Penal Law Article 130.
- Under New York law, “sexual assault” includes any and all “sexual offenses” defined in New York State Penal Code Article 130. These sexual offenses include sexual misconduct, rape, sexual abuse, forcible touching, and aggravated sexual contact, and involve conduct that would generally fall within the above-listed definitions. However, these offenses also cover certain actions, such as sexual assault with an object, which may not be included within the above-listed definitions. Students and employees are encouraged to review the full definitions and elements of these offenses, which can be found in New York State Penal Law §§ 130.00 to 130.96. Under New York State law, a sexual offense occurs when certain sexual acts are perpetrated against a victim without his or her affirmative consent.

P. “Sexual Misconduct” – a term used by FMCC, which includes any incident of “sexual assault,” “nonconsensual sexual activity,” “relationship violence,” and/or “stalking,” as those terms are defined in this Policy.

Q. “Stalking” as defined under both federal and state law.

- Generally, stalking is a pattern of behavior that can include:
 - Repeatedly leaving or sending victim unwanted items, presents, flowers
 - Harassing the victim through the internet, including social networking websites
 - Repeated, unwanted and intrusive phone calls, e-mails or text messages; especially after being clearly informed to stop
 - Damaging or threatening to damage the victim’s property

- Following, monitoring, surveillance of victim and/or victim's family, friends, co-workers
- Abusing or killing a pet or other animal
- Crossing jurisdictions/borders to stalk/commit offenses
- Under the federal Clery Act regulations, stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to (a) fear for the person's safety or the safety of others; or (b) suffer substantial emotional distress. For the purposes of this definition:
 - "course of conduct" means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property;
 - "reasonable person" means a reasonable person under similar circumstances and with similar identities to the victim; and
 - "substantial emotional distress" means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.
- Under New York law, a person engages in stalking when he or she intentionally, and for no legitimate purpose, engages in a course of conduct directed at a specific person, and knows or reasonably should know that such conduct:
 - is likely to cause reasonable fear of material harm to the physical health, safety or property of such person, a member of such person's immediate family or a third party with whom such person is acquainted; or
 - causes material harm to the mental or emotional health of such person, where such conduct consists of following (including unauthorized tracking of someone's movements or location through a GPS or other device), telephoning or initiating communication or contact with such person, a member of such person's immediate family or a third party with whom such person is acquainted, and the actor was previously clearly informed to cease that conduct; or
 - is likely to cause such person to reasonably fear that his or her employment, business or career is threatened, where such conduct consists of appearing, telephoning or initiating communication or contact at such person's place of employment or business, and the actor was previously clearly informed to cease that conduct.

More detailed definitions can be found in New York State Penal Law §§ 120.45 to 120.60.

- R. "Title IX Coordinator" shall mean the Title IX Coordinator and/or his or her designee or designees.

III. Alcohol and/or Drug Use Amnesty for Students in Sexual Misconduct Cases

The health and safety of every student at the State University of New York and its State-operated and community Colleges is of utmost importance. FMCC recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that sexual misconduct, including but not limited to relationship violence, stalking, or sexual assault occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. FMCC strongly encourages students to report sexual misconduct, relationship violence, stalking, or sexual assault to institution officials. A bystander acting in good faith or a complainant acting in good faith who discloses any incident of sexual misconduct, relationship violence, stalking, or sexual assault to FMCC's officials or law enforcement will not be subject to FMCC's Code of Conduct action for violations of alcohol and/or drug use policies occurring at or near the time of the commission of the sexual misconduct, relationship violence, stalking, or sexual assault.

IV. Campus Climate Assessment

Climate assessments afford institutions the opportunity to better understand their campus and to make informed decisions when it comes to providing a safe educational environment. On an annual basis, each State University of New York State-operated and community College will conduct a uniform climate survey that ascertains student experience with and knowledge of reporting and College adjudicatory processes for sexual misconduct and other related crimes.

The survey will address at least the following:

- Student and employee knowledge about:
 - The Title IX Coordinator's role;
 - Campus policies and procedures addressing sexual assault;
 - How and where to report sexual misconduct as a victim/survivor or witness;
 - The availability of resources on and off campus, such as counseling, health, academic assistance;
 - The prevalence of victimization and perpetration of sexual assault, relationship violence, and stalking on and off campus during a set time period (for example, the last two years);
 - Bystander attitudes and behavior;
 - Whether victims/survivors reported to FMCC and/or police, and reasons why they did or did not report.
 - The general awareness of the difference, if any, between the institution's policies and the penal law; and
 - The general awareness of the definition of affirmative consent.

FMCC will take steps to ensure that answers remain anonymous and that no individual is identified. Results will be published as an executive summary on the campus website, provided that no personally identifiable information or information which can reasonably lead a reader to identify an individual is shared.

V. Students' Bill of Rights

The State University of New York and FMCC are committed to providing options, support and assistance to victims/survivors of sexual assault, relationship violence, and/or stalking to ensure that they can continue to participate in FMCC-wide and campus programs, activities, and employment. All victims/survivors of these crimes and violations, regardless of race, color, national origin, religion, creed, age, disability, sex, gender identity or expression, sexual orientation, familial status, pregnancy, predisposing genetic characteristics, military status, domestic violence victim status, criminal conviction, or other protected characteristic, have the following rights, regardless of whether the crime or violation occurs on campus, off campus, or while studying abroad:

All students have the right to:

1. Make a report to local law enforcement and/or state police;
2. Have disclosures of relationship violence, stalking, and sexual assault treated seriously;
3. Make a decision about whether or not to disclose a crime or violation and participate in the conduct process and/or criminal justice process free from pressure from the institution;
4. Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
5. Be treated with dignity and to receive from the institution courteous, fair, and respectful health care and counseling services, where available;

6. Be free from any suggestion that the reporting individual is at fault when these crimes and violations are committed, or should have acted in a different manner to avoid such crimes or violations;
7. Describe the incident to as few institutional representatives as practicable and not to be required to unnecessarily repeat a description of the incident;
8. Be free from retaliation by the institution, the respondent, and/or their friends, family and acquaintances within the jurisdiction of the institution;
9. Access to at least one level of appeal of a determination;
10. Be accompanied by an advisor of choice, including an attorney, who may assist and advise a reporting individual or respondent throughout the conduct process including during all meetings and hearings related to such process;
11. Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or conduct process of the College.

Options in Brief:

Reporting individuals shall have the right to pursue more than one of the options below at the same time, or to choose not to participate in any of the options below:

- Receive resources, such as counseling and medical attention;
- Confidentially or anonymously disclose a crime or violation (for detailed information on confidentiality and privacy, see the section below entitled Options for Confidentially Disclosing Sexual Misconduct).
- Make a report to:
 - An employee with the authority to address complaints, including the Title IX Coordinator, the Dean for Student Affairs, or a Human Resources employee;
 - FMCC Office of Public Safety;
 - Local law enforcement; and/or
 - Family Court or Civil Court.

Copies of this Bill of Rights shall be distributed annually to students, made available on FMCC's website, and posted in each campus dining hall, and student union or campus center, and shall include links or information to access the Sexual Misconduct Prevention and Response Policy.

VI. Rights of Reporting Individuals

A. Reporting

Reporting individual have the right to receive, at a minimum, at the first instance of disclosure by a reporting individual to a College representative, the following information:

“You have the right to make a report to FMCC Police or Campus Security, local law enforcement, and/or State Police or choose not to report; to report the incident to your institution; to be protected by the institution from retaliation for reporting an incident; and to receive assistance and resources from your institution.”

1. Confidential Reports

- To disclose *confidentially* the incident to a College official, who by law may maintain confidentiality, and can assist in obtaining services. More information on confidential

reports is available in Options for Confidentially Disclosing Sexual Misconduct (section VII) below.

- To disclose *confidentially* the incident and obtain services from New York State, Fulton or Montgomery County, or other outside resources.. More information on confidential reports is available in Options for Confidentially Disclosing Sexual Misconduct (section VII) below.

2. Emergency Assistance

- To disclose the incident to the Title IX Coordinator or another appropriate official who has been designated by the Title IX Coordinator to provide emergency assistance (the “Designee”).
 - The Designee may be an official of FMCC or an official of an off campus resource.
 - The Title IX Coordinator or Designee will be available upon the first instance of disclosure by a reporting individual to provide immediate information and assistance regarding (1) options to proceed, including other reporting options; (2) where applicable, the importance of preserving evidence and obtaining a sexual assault forensic examination as soon as possible; and (3) the criminal justice process, including that it utilizes different standards of proof and evidence and that any questions about whether a specific incident violated the penal law should be addressed to law enforcement or to the district attorney.
 - The Title IX Coordinator or Designee will also provide the information contained in the Students’ Bill of Rights, including the right to choose when and where to report, to be protected by the institution from retaliation, and to receive assistance and resources from the institution.
 - The Title IX Coordinator or Designee will also explain that they are private and not confidential resources, and they may still be required by law and College policy to inform one or more College officials about the incident.
 - The Title IX Coordinator will generally be available for emergency access on weekdays between the hours of 8:00 a.m. to 4:00 p.m., at the following: Arlene Spencer (Office A111), 518-736-3622 ext. 8100, arlene.spencer@fmcc.edu.
 - When the Title IX Coordinator is not available, emergency access to a designee will be available, at the following:
 - Sexual Assault Support Services, 518-736-1911 ext. 4221, Hotline 866-307-4086
 - FMCC Office of Public Safety, 518-736-3622 ext. 8405, Physical Education Building, FMCC campus.

-
The Title IX Coordinator will generally be available for emergency access on weekdays between the hours of 8:00 a.m. to 4:00 p.m., at the following: Dean for Student Affairs, Arlene Spencer, aspencer@fmcc.edu.

- When the Title IX Coordinator is not available, emergency access to a Designee will be available, at the following:
 - Sexual Assault Support Services, 518-736-1911 ext. 4221, Hotline 866-307-4086
 - FMCC Office of Public Safety, (518) 736-3622 ext. 8405, Physical Education Building, FMCC campus.

3. Criminal Complaint

To file a criminal complaint with local law enforcement and/or State Police:

City of Amsterdam Police	518-842-1100	1 Guy Park Ave Amsterdam, NY 12010
City of Gloversville Police	518-773-4572	3 Frontage Rd. Gloversville, NY 12078
City of Johnstown Police	518-736-4021	41 E Main St Johnstown, NY 12095
Fulton County Sheriff	518-736-2100	2172 County Hwy 29 Johnstown, NY 12095

- New York State Police 24-hour hotline to report sexual assault on a NY College campus: 1-844-845-7269.
- If a reporting individual wants or needs assistance in notifying the local Police Departments or State Police, he or she should contact FMCC's Office of Public Safety who will assist in doing so. FMCC's Office of Public Safety can be contacted at: 518-736-3622 ext. 8405.
- Please note that there are significant differences between FMCC's disciplinary system and the criminal justice system, because they have different, important goals. In the criminal justice system, prosecutors pursue cases when they believe there is sufficient evidence to prove, beyond a reasonable doubt, that an individual has committed a criminal act. A person who is convicted of a crime will face criminal penalties, such as incarceration, probation, or the imposition of a fine. FMCC's disciplinary process seeks to determine whether an individual has violated College policy. In this process, a preponderance of the evidence standard of proof is used to determine responsibility. A person who is found to have violated FMCC policy may be suspended, expelled or otherwise restricted from full participation in the FMCC community. Additional information regarding these distinctions can be found in section X and Addendum A below.

4. Private Reports

- To file a campus report of sexual assault, relationship violence, and/or stalking, and/or talk to the Title IX Coordinator for information and assistance.
 - Reports can be made to the Title IX Coordinator:
Arlene Spencer (Office A111)
Title IX Coordinator
518-736-3622 ext. 8100
arlene.spencer@fmcc.edu
 - Reports can also be made to any FMCC employee. If a report is made to another FMCC employee, this employee will refer the report to the Title IX Coordinator.
 - Reports will be investigated in accordance with FMCC policy, outlined below, and the reporting individual's identity shall remain private at all times if said reporting individual wishes to maintain privacy.
 - If a reporting individual wishes to keep his/her identity anonymous, he or she may call the Title IX Coordinator anonymously to discuss the situation and available options. See below for additional details on making a confidential report to FMCC.
- To file a Formal Title IX Complaint under the Title IX Grievance Procedure (<https://fmcc.edu/non-discrimination-policy>).
 - Formal Title IX Complaints can be made after consulting with the Title IX Coordinator,

- at the following: Dean for Student Affairs, Arlene Spencer, aspencer@fmcc.edu.
- Formal Title IX Complaints will be investigated and discipline, if any, will be imposed pursuant to the Title IX Grievance Procedure.
- When the respondent is an employee, to report the incident to the FMCC Office of Human Resources. Current reports should be sent to Arlene Spencer, Student Welcome Center, A111, 518-736-3622 ext. 8100, email arlene.spencer@fmcc.edu.
 - Disciplinary proceedings (if any) will be conducted in accordance with any applicable collective bargaining agreement, law, or policy for unrepresented employees.
 - When the respondent is an employee of an affiliated entity or vendor of the College, College officials will, at the request of the reporting individual, assist in reporting to the appropriate office of the vendor or affiliated entity and, if the response of the vendor or affiliated entity is not sufficient, issue a *persona non grata* letter, subject to legal requirements and College policy.

5. Withdrawal

- To withdraw your complaint or involvement from the FMCC process at any time.
 - If you choose to withdraw, however, FMCC may still have obligations to investigate and/or take actions under state or federal law. If FMCC continues an investigation or takes action after you withdraw, you have the right to participate as much or as little as you wish.

B. Resources

Reporting individuals have the following rights:

1. Assistance with Legal Proceedings

- To receive assistance by one of the following below-listed agencies in initiating legal proceedings in family court or civil court.
 - Empire Justice Center
119 Washington Avenue, 3rd Floor
Albany, NY 12210
Business Phone: Long Island: 631-650-2317; Rochester: 585-454-4060
 - Pro Bono Appeals Program c/o Rural Law Center of NY
90 State Street, Suite 700
Albany, NY 12207
Business Phone: 518-561-5460
Website: <http://www.nysba.org/CustomTemplates/Content.aspx?id=180>
 - Legal Aid Society of Northeastern New York - Amsterdam office
1 Kimball Street
Amsterdam, NY 12010
Business Phone: 518-842-9466 / Hotline: 800-821-8347
Website: <http://www.lasnnny.org>

2. Intervention Services

- To obtain effective intervention services.
 - Sexual contact can transmit Sexually Transmitted Infections (STI) and may result in pregnancy. Testing for STIs and emergency contraception is available. Students can obtain tests for STIs and emergency contraception at the following:

St. Mary's Hospital	518-842-1900	427 Guy Park Ave Amsterdam, NY
Nathan Littauer Hospital	518-725-8621	99 E State St Gloversville, NY
Sexual Assault & Crime Victim Services, Planned Parenthood Mohawk Hudson	518-736-1911 866-307-4086 24 hr. hotline	400 North Perry St. Johnstown, NY

- Other applicable available centers and services include the following:

Program/Entity	Contact Information	Cost
YWCA North Eastern NY (NENY)	P: 518-374-3394 Hotline: 518-374-3386 E: info@ywca-neny.org W: http://www.ywca-northeasternny.org/	No cost
Sexual Assault Support Services of Planned Parenthood Mohawk- Hudson	P: 518-736-1911 ext. 4221 Hotline: 866-307-4086 E: j.pustolka@ppmhchoices.org W: https://www.plannedparenthood.org/planned-parenthood-mohawk-hudson	No cost
Unity House	P: 518-272-2370 W: https://www.unityhouseny.org/	No cost
Equinox Domestic Violence Services	P: 518-434-7865 W: http://www.equinoxinc.org/page/what-we-do-2.html	No cost
NYS Office for the Prevention of Domestic Violence	P: 800-942-6906 W: http://www.opdv.ny.gov/contact.html	No cost
New York State Coalition Against Sexual Assault	P: 800-942-6906 W: http://nyscasa.org/	For a fee

- Within 96 hours of an assault, you can get a Sexual Assault Forensic Examination (commonly referred to as a rape kit) at one of the above-listed hospitals
 - While there should be no charge for a rape kit, there may be a charge for medical or counseling services off campus and, in some cases, insurance may be billed for services. You are encouraged to let hospital personnel know if you do not want your insurance policyholder to be notified about your access to these services.
 - The New York State Office of Victim Services may be able to assist in compensating victims/survivors for health care and counseling services, including emergency funds. More information may be found here: <https://ovs.ny.gov/>, or by calling 1-800-247-8035. Options are explained here: <https://ovs.ny.gov/help-crime-victims>.

- To best preserve evidence, victims/survivors should avoid showering, washing, changing clothes, combing hair, drinking, eating, or doing anything to alter physical appearance until after a physical exam has been completed.

3. Assistance to Obtain an Order of Protection

- All reporting individuals have the right to have assistance from the FMCC Office of Public Safety or other College officials in initiating legal proceedings in family court or civil court, including but not limited to obtaining an Order of Protection or, if outside of New York State, an equivalent protective or restraining order.
 - FMCC serves as a resource to students in initiating these proceedings. However, FMCC is not required to bring actions on behalf of reporting individuals, provide or pay for attorneys, or provide direct support. The local resources listed above, may be able to help you initiate legal proceedings, however.
- All reporting individuals have the right to receive a copy of the Order of Protection or equivalent and have an opportunity to meet or speak with a College official who can explain the order and answer questions about it, including information from the Order about the respondent's responsibility to stay away from the protected person(s); that burden does not rest on the protected person(s). The following individuals can be contacted for assistance in obtaining or understanding an Order of Protection:
 - Davida Capece, Public Safety Office, Physical Education Building, P144, 518-736-3622 ext. 8405, dcapece@fmcc.edu.
 - An order of protection is issued by the court to limit the behavior of someone who harms or threatens to harm another person. It is used to address various types of safety issues, including, but not limited to situations involving relationship violence, stalking and sexual assault. Family Courts, criminal courts, and Supreme Courts can all issue orders of protection. An order of protection may direct the offending person not to injure, threaten or harass you, your family, or any other person(s) listed in the order.
 - A Family Court order of protection is issued as part of a civil proceeding. Its purpose is to stop violence within a family, or within an intimate relationship, and provide protection for those individuals affected. All Family Court proceedings are confidential. To obtain an order of protection in the Family Court, your relationship to the other person must fall into one of the following categories: (1) current or former spouse, (2) someone with whom you have a child in common, (3) a family member to whom you are related by blood or marriage, or (4) someone with whom you have or have had an "intimate relationship." An intimate relationship does not have to be a sexual relationship. A relationship may be considered intimate depending on factors such as how often you see each other, or how long you have known each other. After a petition is filed, the court will decide if it is an intimate relationship.
 - To start a proceeding in Family Court, you need to file a form called a Family Offense petition. You can contact the Family Court in your county for help completing and filing the petition. Contact information for the Family Courts in Fulton and Montgomery Counties is as follows:
 - Fulton County Family Court
223 W Main St, Johnstown, NY 12095
(518) 706-3260
 - Montgomery County Family Court
58 Broadway, Fonda, NY 12068

(518) 853-8133

- You may also wish to speak with an attorney or domestic violence advocate before filing.
- A criminal court order of protection is issued as a condition of a defendant's release and/or bail in a criminal case. A criminal court order of protection may only be issued against a person who has been charged with a crime.
- Reporting individuals have the right to an explanation of the consequences for violating these orders, including but not limited to arrest, additional conduct charges, and interim suspension.
- Reporting individuals have the right to have assistance from Campus Safety in effecting an arrest when an individual violates an Order of Protection or, if outside of New York State, an equivalent protective or restraining order within the jurisdiction of Campus Safety or, if outside of the jurisdiction, to call on and assist local law enforcement in effecting an arrest for violating such an order.

VII. Options for Confidentially Disclosing Sexual Misconduct

A. Confidential Resources

Individuals who are *confidential* resources will not report crimes to law enforcement or College officials without your permission, except for extreme circumstances, such as child abuse or an imminent threat. At FMCC, this includes:

- St Mary's Healthcare Counseling Services, Academic Advising and Student Records N-107, 518-736-3622 ext. 8148.
- Employee Assistance Program, St. Mary's Healthcare, 430 Guy Park Ave, Amsterdam, NY 12010, 518-843-0503, 800-477-4143
- Anonymous On-line Reporting Form: <https://fmcc.edu/about-fmcc/public-safety>.

Off-campus options to disclose sexual violence *confidentially* include:

- Off-campus counselors and advocates. Crisis services offices will generally maintain confidentiality unless you request disclosure and sign a consent or waiver form. More information on an agency's policies on confidentiality may be obtained directly from the agency. (Note that these outside options do not provide any information to the campus.)

Program/Entity	Contact Information	Cost
Sexual Assault Support Services of Planned Parenthood Mohawk-Hudson	P: 518-736-1911 ext. 4221 Hotline: 866-307-4086 E: j.pustolka@ppmhchoices.org W: https://www.plannedparenthood.org/planned-parenthood-mohawk-hudson	No cost
YWCA North Eastern NY (NENY)	P: 518-374-3394 Hotline: 518-374-3386 E: info@ywca-neny.org W: http://www.ywca-northeasternny.org/	No cost
Unity House	P: 518-272-2370 W: https://www.unityhouseny.org/	No cost
Equinox Domestic Violence Services	P: 518-434-7865 W: http://www.equinoxinc.org/whatwedo/dv.php	No cost

Program/Entity	Contact Information	Cost
Legal Aid Society of Northeastern New York	P: 800-462-2922 W: http://www.lasnny.org	For a fee
Empire Justice Center	P: 518-462-6831 W: http://www.empirejustice.org	No cost
NYS Office for the Prevention of Domestic Violence	P: 800-942-6906 W: http://www.opdv.ny.gov/contact.html	No cost
New York State Coalition Against Sexual Assault	P: 800-942-6906 W: http://nyscasa.org/	For a fee
Victim Advocacy Services (VAS) for Fulton, Montgomery, Hamilton Counties	P: 866-307-4086 W: https://www.plannedparenthood.org/planned-parenthood-mohawk-hudson/victim-advocacy-services	No cost
In Our Own Voices	P: 518-432-4188 W: www.inourownvoices.org	No cost

- Off-campus healthcare providers:

Program/Entity	Location	Contact Information	Cost
St Mary's Healthcare	427 Guy Park Ave Amsterdam, NY	518-842-1900	For a fee
Nathan Littauer Hospital	99 E State St, Gloversville, NY	518-725-8621	For a fee

- Note that medical office and insurance billing practices may reveal information to the insurance policyholder, including medication and/or examinations paid for or administered. The New York State Office of Victim Services may be able to assist in compensating victims/survivors for health care and counseling services, including emergency compensation. More information may be found here: <https://ovs.ny.gov/>, or by calling 1-800-247-8035. Options are explained here: <https://ovs.ny.gov/help-crime-victims>.

Note that even individuals who can typically maintain confidentiality are subject to exceptions under the law, including when an individual is an imminent threat to him or herself or others and the mandatory reporting of child abuse.

B. Privacy versus Confidentiality

Even FMCC officers and employees who cannot guarantee *confidentiality* will maintain your *privacy* to the greatest extent possible. The information you provide to a nonconfidential resource will be relayed only as necessary to investigate and/or seek a resolution and to notify the Title IX Coordinator or designee, who is responsible under the law for tracking patterns and spotting systemic issues. FMCC will limit the disclosure as much as possible, even if the Title IX Coordinator determines that the request for confidentiality cannot be honored.

Additional information as to how FMCC will weigh and respond to a request for confidentiality is set forth

below in section X (B) (Consent to Conduct an Investigation).

The Family Educational Rights and Privacy Act (“FERPA”) allows institutions to share information with parents when (1) there is a health or safety emergency, or (2) when the student is a dependent on either parents’ prior year federal income tax return. Generally, FMCC will not share information about a report of sexual misconduct with parents without the permission of the reporting individual.

C. Anonymous Disclosure

You can make a report through an external anonymous hotline. These hotlines include the following:

- New York State Domestic and Sexual Violence Hotline: 800-942-6906.
- Equinox Hotline: 518-432-7865.
- Unity House Hotline: 518-272-2370.
- The National Domestic Violence Hotline: 800-799-7233.
- The National Sexual Assault Hotline: 800-656-4673.
- Safe Horizon Hotlines: 800-621-4673 (domestic violence), 866-689-4357 (victims of other crimes, 212-227-3000 (rape & sexual assault victims).
- New York City or county hotlines: <http://www.opdv.ny.gov/help/dvhotlines.html>.
- Additional disclosure and assistance options are catalogued by the Office for the Prevention of Domestic Violence and presented in several languages: <http://www.opdv.ny.gov/help/index.html> (or by calling 800-942-6906), and assistance can also be obtained through:
 - SurvJustice: <https://survjustice.org/get-legal-help/>;
 - Legal Momentum: <https://www.legalmomentum.org/>;
 - NYSCASA: <http://nyscasa.org/responding>;
 - NYSCADV: <http://www.nyscadv.org/>;
 - Pandora’s Project: <https://pandys.org/>;
 - GLBTQ Domestic Violence Project: <http://www.glbtdvp.org/>; and
 - RAINN: <https://www.rainn.org/get-help>.
- Note that these hotlines are for crisis intervention, resources, and referrals, and are not reporting mechanisms, meaning that disclosure on a call to a hotline does not provide any information to the campus. Reporting individuals are encouraged to additionally contact a campus confidential or private resource so that the campus can take appropriate action in these cases.

VIII. **Student Onboarding and Ongoing Education**

The State University of New York and its State-operated and community colleges believe that sexual misconduct prevention training and education cannot be accomplished via a single day or a single method of training. To that end, FMCC will continue to educate all new and current students using a variety of best practices aimed at educating the entire College community in a way that decreases violence and maintaining a culture where sexual assault and acts of violence are not tolerated.

A. Student On-Boarding

All new first year and transfer students, during the course of their onboarding to FMCC, will be offered training on the following topics, using a method and manner determined by FMCC:

1. FMCC prohibits sexual misconduct, including sexual assault, relationship violence, stalking, other violence or threats of violence, and will offer resources to any victims/survivors of such violence while taking administrative and conduct action regarding any respondent within the jurisdiction of the institution;
2. Relevant definitions including, but not limited to, the definitions of sexual assault, relationship violence, stalking, confidentiality, privacy, and affirmative consent;
3. Policies apply equally to all students regardless of sexual orientation, gender identity, or gender expression;
4. The role of the Title IX Coordinator, FMCC Campus Security, and other relevant offices that address relationship violence, stalking, and sexual assault prevention and response;
5. Awareness of sexual misconduct, its impact on victims and survivors and their friends and family, and its long-term impact;
6. The Students' Bill of Rights and Sexual Misconduct Prevention and Response Policy, including:
 - How to report sexual misconduct and other crimes confidentially, and/or to College officials, campus law enforcement and security, and local law enforcement; and
 - How to obtain services and support;
7. Bystander intervention and the importance of taking action to prevent violence when one can safely do so;
8. The protections of the Policy for Alcohol and/or Drug Use Amnesty for Students and Sexual Misconduct Cases.
9. Risk assessment and reduction including, but not limited to, steps that potential victims, perpetrators, and bystanders can take to lower the incidence of violations, which may contain information about the dangers of drug and alcohol use, including underage drinking and binge drinking, involuntary consumption of incapacitating drugs and the danger of mislabeled drugs and alcohol, the importance of communication with trusted friends and family whether on campus or off campus, and the availability of institution officials who can answer general or specific questions about risk reduction; and
10. Consequences and sanctions for individuals who commit these crimes and Code of Conduct violations.

The onboarding process is not limited to a single day of orientation but recognizes that students enroll at different times at different SUNY campuses and gives campuses the flexibility to best educate students at a time and manner that can most effectively bring these points to light. FMCC will conduct these trainings for all new students, whether first-year or transfer, undergraduate, graduate, or professional. FMCC shall use multiple methods to educate students about sexual misconduct prevention.

Each SUNY institution will also share information on sexual misconduct prevention with parents of enrolling students. Information for parents can be found on FMCC's website, at <https://fmcc.edu/images/pages/About/FMCC%20Board%20Policy.pdf>.

B. Additional Training Provided by FMCC

In addition to the training outlined in the Policy, FMCC also offers specific training to international students, students that are also employees, leaders and officers of registered or recognized student organizations, and online and distance education students, and members of any high-risk populations, as determined by FMCC.

Additionally, FMCC offers general and specific training on each of the following topics to all students and employees:

1. FMCC's policy prohibiting relationship violence, sexual assault, and stalking;
2. the definitions of "dating violence," "domestic violence," "sexual assault," and "stalking" under federal law, New York law, and FMCC's policies;
3. the definition of "consent," in reference to sexual activity, under federal law, New York law, and FMCC's policies;
4. a description of FMCC's educational programs and campaigns to promote the awareness of relationship violence, sexual assault, and stalking;
5. procedures victims should follow if a crime of relationship violence, sexual assault, or stalking has occurred, including information about:
 - a. the importance of preserving evidence that may assist in proving that the alleged criminal offense occurred or may be helpful in obtaining a protection order;
 - b. how and to whom the alleged offense should be reported;
 - c. options about the involvement of law enforcement and campus authorities, including notification of the victim's option to: (i) notify proper law enforcement authorities, including on-campus and local police; (ii) be assisted by campus authorities in notifying law enforcement authorities if the victim so chooses; and (iii) decline to notify such authorities;
6. the rights of victims and FMCC's responsibilities for orders of protection, "no-contact" orders, restraining orders, or similar lawful orders issued by a criminal, civil, or tribal court or by FMCC;
7. information about how FMCC will protect the confidentiality of victims and other necessary parties, including how it will:
 - a. complete publicly available recordkeeping without including personally identifying information about the victim; and
 - b. maintain as confidential any accommodations or protective measures provided to the victim, to the extent that maintaining such confidentiality would not impair the ability of FMCC to provide the accommodations or protective measures;
8. FMCC's policy of providing written notification to students and employees about existing counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid, and other services available for victims, both within FMCC and in the community; and
9. FMCC's policy of providing written notification to victims about options for, available assistance in, and how to request changes to academic, living, transportation, and working situations or protective measures;
10. FMCC's policy that, when a student or employee reports to FMCC that the student or employee has been a victim of relationship violence, sexual assault, or stalking, whether the offense occurred on or off campus, the institution will provide the student or employee a written explanation of the student's or employee's rights and options;
11. a description of FMCC's disciplinary proceedings regarding alleged incidents of relationship violence, sexual assault, or stalking, which:
 - a. include a prompt, fair, and impartial process from the initial investigation to the final result;
 - b. are conducted by officials who, at a minimum, receive annual training on the issues related to relationship violence, sexual assault, and stalking and on how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability;
 - c. provide the complainant and the respondent with the same opportunities to have others present during any institutional disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice;

- d. do not limit the choice of advisor or presence for either the complainant or the respondent in any meeting or institutional disciplinary proceeding; and
- e. require simultaneous notification, in writing, to both the complainant and the respondent, of
 - (i) the result of any institutional disciplinary proceeding that arises from an allegation of dating violence, domestic violence, sexual assault, or stalking; (ii) the institution's procedures for the respondent and the complainant to appeal the result of the institutional disciplinary proceeding, if such procedures are available; (iii) any change to the result; and (iv) when such results become final.
- 12. information on how to prevent and identify sexual violence;
- 13. the potential for re-victimization by responders and its effect on students and employees;
- 14. the impact of trauma on victims;
- 15. the role alcohol and drugs can play in sexual violence incidents;
- 16. appropriate methods for responding to a student or employee who may have experienced sexual violence, including the use of nonjudgmental language;
- 17. reporting obligations, including what should be included in a report, any consequences for failing to report, and how requests for confidentiality should be treated;
- 18. protections against retaliation; and
- 19. other information to prevent violence, promote safety and reduce perpetration.

Additionally, all employees and students are offered information regarding risk reduction. Risk reduction means options designed to decrease perpetration and bystander inaction, and to increase empowerment for victims in order to promote safety and to help individuals and communities address conditions that facilitate violence.

The Title IX Coordinator, and designees (if any), also receive annual training on:

- issues related to sexual assault, relationship violence, and stalking,
- how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability,
- how to conduct investigations of sexual violence,
- the effects of trauma,
- impartiality,
- the rights of the respondent, including the right to a presumption that the respondent is “not responsible” until a finding of responsibility is made, and
- FM’s policies and procedures, and other issues.

Further, FMCC trains all Title IX Coordinators and all investigators, decision-makers, individuals involved in informal resolution processes under the Title IX Grievance Procedure, on the following:

- the scope of FMCC’s education program or activity,
- how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and
- how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

Decision-makers under the Title IX Grievance Procedure also receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainant’s sexual predisposition or prior sexual behavior are not relevant under the Title IX Grievance Procedure.

Investigators under the Title IX Grievance Procedure receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.

Any materials used to train Title IX Coordinators and Title IX Grievance Procedure investigators, decision-makers, and informal mediators:

- do not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment;
- are publicly available on FMCC's website; and
- are maintained by FMCC for a period of seven years.

Methods of training and educating students may include, but are not limited to:

- President's welcome messaging;
- Peer theater and peer educational programs;
- Online training;
- Social media outreach;
- First-year seminars and transitional courses;
- Course syllabi;
- Faculty teach-ins;
- Institution-wide reading programs;
- Posters, bulletin boards, and other targeted print and email materials;
- Programming surrounding large recurring campus events;
- Partnering with neighboring SUNY and non-SUNY Colleges to offer training and education;
- Partnering with State and local community organizations that provide outreach, support, crisis intervention, counseling and other resources to victims/survivors of crimes to offer training and education. Partnerships can also be used to educate community organizations about the resources and remedies available on campus for students and employees seeking services; and
- Outreach and partnering with local business those attract students to advertise and educate about these policies.

As part of FMCC's public awareness campaign, FMCC may from time-to-time schedule primary prevention, public awareness, and advocacy programs for students and employees. Information regarding these programs can be found on FMCC's website.

If an individual discloses information through a public awareness event such as candlelight vigils, protests, or other public event, FMCC is not obligated to begin an investigation based on such information. However, FMCC may use the information provided at such an event to inform its efforts for additional education and prevention efforts.

FMCC will engage in a regular assessment of their programming and policies to determine effectiveness. FMCC may either assess its own programming or conduct a review of other campus programming and published studies to adapt its programming to ensure effectiveness and relevance to students.

C. Bystander Intervention Training Provided by FMCC

FMCC also offers training on bystander intervention. Bystander intervention means safe and positive options that may be carried out by an individual or individuals to prevent harm or intervene when there is a risk of relationship violence, sexual assault, or stalking. Bystander intervention includes recognizing situations of potential harm, understanding institutional structures and cultural conditions that facilitate

violence, overcoming barriers to intervening, identifying safe and effective intervention options, and taking action to intervene.

FMCC expects all members of the campus community to take reasonable and prudent actions to prevent or stop an act of sexual misconduct. Educating and engaging bystanders are effective ways to help prevent acts of sexual misconduct. Bystanders can help in several different ways, including direct invention, seeking assistance from an authority figure, notifying campus security, or calling State or local law enforcement.

If you see an act of sexual misconduct: It is important to understand that no individual has the right to be violent, regardless of whether people are in a relationship. Recognizing when acts of sexual misconduct are occurring is the first step to intervening. Required campus education and training programs give a full synopsis on recognizing when sexual misconduct is taking place. If you make the decision to intervene, do so safely – violence does not stop violence, and, if you cannot stop the act with your words, call law enforcement. Do not be afraid to ask an employee or other students for help.

If a victim confides in you: It is important to let victims tell their stories. Listen respectfully, and help them explain and identify what has happened to them. Do not contradict them or play “devil’s advocate” even if parts of the story don’t immediately make sense or even if you would have made other choices when presented with the same scenario or challenges. Help the victim identify others in their network who they can confide in. Ask the victim what they need to feel safe, encourage them to seek medical attention and counseling, and encourage them to report the act if they feel comfortable doing so. The first people that a victim talks to can have a significant impact on the person and his or her ability to report and get through an ordeal. Be a supportive, kind, understanding and nonjudgmental person and you can be a positive force for this victim in seeking the help they require to move forward.

IX. Interplay Between the Criminal Justice Process & the Sexual Misconduct Process Under the Policy

- A. FMCC disciplinary proceedings may be instituted against a student charged with sexual misconduct that potentially violates both the criminal law and the Student Conduct Code, without regard to the pendency of civil or criminal litigation in court or criminal arrest or prosecution.
- B. The conduct process for any proceeding involving a sexual misconduct charge will run concurrently with a criminal justice investigation and proceeding, except for temporary delays as requested by external municipal entities while law enforcement gathers evidence, which should not last more than 10 days except when law enforcement specifically requests and justifies a longer delay. The Title IX Coordinator is responsible for determining whether a delay is justified. Determinations made or sanctions imposed by FMCC shall not be subject to change because criminal charges arising out of the same facts giving rise to violation of FMCC rules were dismissed, reduced, or resolved in favor of or against the criminal law defendant.
- C. FMCC will cooperate fully with law enforcement and other agencies in the enforcement of criminal law on campuses and in the conditions imposed by criminal courts for the rehabilitation of student violators (provided that the conditions do not conflict with campus rules or sanctions). Individual members of the College community, acting in their personal capacities, remain free to interact with governmental representatives as they deem appropriate.
- D. Nothing in FMCC’s policies limits the rights of students to pursue cases through the criminal justice system. There are significant differences between the two systems because they have different,

important goals. In the criminal justice system, prosecutors pursue cases when they believe there is sufficient evidence to prove, beyond a reasonable doubt, that an individual has committed a criminal act. A person who is convicted of a crime will face criminal penalties, such as incarceration, probation, or the imposition of a fine. FMCC's disciplinary process seeks to determine whether an individual has violated College policy. In this process, a preponderance of the evidence standard of proof is used to determine responsibility. A person who is found to have violated FMCC policy may be suspended, expelled or otherwise restricted from full participation in the FMCC community. A document that further explains the differences between the two systems can be found in Addendum A.

X. Sexual Misconduct Investigation Process & Procedures

When FMCC becomes aware of an incident of sexual misconduct by or against an employee or student or that has a reasonable connection to FMCC, it will take prompt and appropriate action.

A. Initial Assessment

The Title IX Coordinator will make an initial assessment regarding the validity of any information received about the incident. The Title IX Coordinator will also determine whether the alleged incident is an incident of sexual misconduct, or should more appropriately be dealt with under other FMCC policies, such as the Code of Conduct. This initial determination will be made within 3 business days of FMCC becoming aware of allegations that sexual misconduct has been committed.

B. Consent to Conduct an Investigation

If the Title IX Coordinator determines that an investigation is required, he or she must seek consent from the reporting individual prior to conducting an investigation. If a reporting individual does not consent to FMCC's request to initiate an investigation, the Title IX Coordinator will weigh the request against FMCC's obligation to provide a safe, nondiscriminatory environment for all members of its community.

FMCC will honor a request to decline to consent to an investigation, unless FMCC determines in good faith that failure to investigate does not adequately mitigate a potential risk of harm to the reporting individual or other members of the community, based on the Title IX Coordinator's consideration of factors that include, but are not limited to, the following:

- Whether the respondent has a history of violent behavior or is a repeat offender;
- Whether the incident represents escalation in unlawful conduct on behalf of the respondent from previously noted behavior;
- The increased risk that the respondent will commit additional acts of violence;
- Whether the respondent used a weapon or force;
- Whether the reporting individual is a minor; and
- Whether the institution possesses other means to obtain evidence such as security footage, and
- Whether available information reveals a pattern of perpetration at a given location or by a particular group.

If the Title IX Coordinator determines that the request to decline to consent to an investigation can be honored, FMCC will still assist with academic, transportation, employment, and other reasonable and available accommodations.

If the Title IX Coordinator determines that a request to decline to consent to an investigation cannot be

honored, and an investigation is necessary, FMCC must notify the reporting individual and take immediate action as necessary to protect and assist them.

C. No Contact Order

- Upon receipt of a report of sexual misconduct by a **student**, FMCC will issue a “no contact order,” whereby: (1) continued intentional contact with the reporting individual is a violation of FMCC’s policy that is subject to additional conduct charges; and (2) if the respondent and a reporting individual observe each other in a public place, it is the responsibility of the respondent to leave the area immediately and without directly contacting the reporting individual. This may include establishing an appropriate schedule for the respondent to access applicable buildings and property of FMCC at a time when such buildings and property are not being accessed by the reporting individual.
- When the **respondent** is a **non-student**, reporting individuals have the right to make a request for FMCC to impose a “no contact order.”
 - To make such a request, reporting individuals should contact: Title IX Coordinator, Arlene Spencer, Student Welcome Center A111, 518-736-3622 ext. 8100 or email arlene.spencer@fmcc.edu or Davida Capece, Public Safety Office, Physical Education Building, P144, 518-736-3622 ext. 8405, dcapece@fmcc.edu.
- Upon request, both the respondent and the reporting individual are entitled to a prompt review, reasonable under the circumstances, of the need for and terms of the no contact order, including potential modification, in which they are allowed to submit evidence in support of their requests. Requests to review a no contact order should be submitted to the Dean for Student Affairs. If a request for review is received from one party, the other party will be notified of the request for review. The Dean for Student Affairs will issue a determination in response to the request and notify both parties of the determination.

D. Interim Measures and Accommodations

- FMCC is obligated to provide reasonable and available interim measures and accommodations that effect a change in academic, employment, transportation or other applicable arrangements in order to help ensure safety, prevent retaliation and avoid an ongoing hostile environment.
- When the **respondent** is a **non-student** but is a **member of the FMCC community** and presents a continuing threat to the health and safety of the community (only), reporting individuals have the right to subject the respondent to interim measures in accordance with applicable collective bargaining agreements, employee handbooks, and FMCC policies and rules.
 - While reporting individuals may request accommodations through any of the offices referenced in this policy, the following office can serve as a point to assist with these measures:
 - Title IX Coordinator, Arlene Spencer, Student Welcome Center A111, 518-736-3622 ext. 8100 or email arlene.spencer@fmcc.edu.
- When the respondent is a visitor, vendor, or contractor, a *persona non grata* letter may be issued consistent with the Code of Conduct, § VII.

- Upon request, FMCC will provide both the respondent and the reporting individual a prompt review, reasonable under the circumstances, of the need for and terms of any such interim measure and accommodation that directly affects him or her, in which he or she is allowed to submit evidence in support of his or her request. Requests to review interim measures should be submitted to the Dean for Student Affairs. If a request for review is received from one party, the other party will be notified of the request for review. The Dean for Student Affairs will issue a determination in response to the request and notify both parties of the determination.

E. Commencement of the Investigation

When an investigation is commenced, the respondent must be informed, as promptly as possible, of:

- the specific rule, law, Policy and/or Code of Conduct provisions alleged to have been violated;
- the date, time, location and factual allegations concerning the violation;
- in what manner the specific rule, law, Policy and/or Code of Conduct are alleged to have been violated, and
- the sanction or sanctions that may be imposed on the respondent based upon the outcome of any conduct process.

Within 3 business days of determining that an investigation is necessary, the Title IX Coordinator, or his/her designee, who shall be a trained investigator, and who does not have a conflict of interest, will promptly commence a fair, complete, thorough, and impartial investigation, which provides a meaningful opportunity to be heard. The designated investigator must have received annual training that covers topic including, but not limited to, the following: (1) issues related to sexual misconduct, (2) how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability; (3) conducting investigations of sexual misconduct; (4) the effects of trauma; (5) impartiality; (6) the rights of the respondent, including the right to a presumption that the respondent is “not responsible” until a finding of responsibility is made; and (7) FMCC’s policies and procedures, including the Policy.

If the Title IX Coordinator is implicated in the report, the President will be responsible for designating a trained investigator to conduct the investigation. If it would be inappropriate for the Title IX Coordinator or President to designate an investigator to conduct the investigation, then the Chair of the Board of Trustees will make this designation.

F. Standard of Evidence

The standard of evidence used to evaluate a report of an incident of sexual misconduct by or against an employee or student is a “preponderance of the evidence.” Under this standard, a determination must be made on the basis of whether it is more likely than not that the respondent student or employee violated the Policy.

G. Investigation Procedures

In investigating the complaint, the designated investigator shall:

- Meet with the appropriate individuals and review all appropriate records that bear on the case.
- Provide the complainant and the respondent with a copy of the Policy.
- Discuss the allegations in the complaint with the complainant and respondent at separate meetings, and provide the complainant and respondent with equal opportunities to identify witnesses and present evidence supporting their respective positions at these meetings.

- Provide the complainant and the respondent with the same opportunities for a support person or advisor of their choice throughout the process, including any meeting, conference, hearing or other procedural action. An attorney for either the complainant and the respondent, however, may be present but may not have a speaking role during such meeting, conference, hearing, or other procedural action.
- Attempt, where appropriate, to resolve the complaint by exploring and suggesting possible solutions to the problem with all involved parties, provided, however, that the complainant or accuser will not be required to participate in mediation with the respondent.
- (If the preceding step does not resolve the problem): Make and transmit a preponderance of the evidence determination in the matter of the allegation of an incident of sexual misconduct to the respondent, complainant, and, if the respondent is an employee, the senior officer for the unit in which the respondent is employed (or the President if the respondent is a senior officer), or, if the respondent is a student, the Dean for Student Affairs.

Additionally, in cases where the reporting individual or respondent are students, the investigator will provide the students with:

- reasonable advance written or electronic notice of any meeting they are required to or are eligible to attend,
- an opportunity to submit evidence during an investigation concerning a report of sexual misconduct, and
- the opportunity to exclude (1) their own prior sexual history with persons other than the other party in the conduct process and (2) their own mental health diagnosis and/or treatment from the investigator's consideration when determining responsibility. (However, the investigator may consider past findings of relationship violence, stalking, or sexual assault when determining the sanction to be imposed).

The time necessary to complete an investigation will vary depending upon the facts of a particular case. In most cases, investigations will be completed within 60 days of receipt of a report.

H. Conclusion of the Investigation

1. Draft Report

The Title IX Investigator will prepare a draft investigation report. Once that draft is prepared the following will occur:

- a. First, each witness will be permitted to review the portion of the report that memorializes their statements to investigators. The witness will be permitted to suggest changes, offer clarifications, and make additions. The witness will ultimately be asked to affirm, in writing, (1) that they are satisfied that they have shared all relevant information known to them, and (2) that the report is an accurate representation of their conversations with the investigators.
- b. Next, the complainant and the respondent(s) will be permitted to review the entire draft report. With respect to their own statements, they will be permitted to suggest changes, offer clarifications, and make additions. Each party will also be given the opportunity to respond to the content of the draft report, request that additional questions be asked of witnesses or the other party to the complaint, and to offer additional evidence or information.
- c. If one party has additional questions, or if additional evidence is offered, the investigator

will follow up on those questions or the evidence and if relevant, will include it in the draft report. The process set forth in paragraph (b), above, may be repeated, in the discretion of the investigator.

2. Final Report

- a. The investigator shall prepare final written findings of fact and recommendations with respect to whether it is more likely than not that the incident of an incident of sexual misconduct occurred, appropriate disciplinary actions, if any, and/or other appropriate remedial measures.
- b. Once the final investigation report is complete, the parties will be informed, in writing, of the outcome, within 2 business days of the issuance of the determination. This written notice will include the result of the investigation, any recommended sanctions, the rationale for the result and any recommended sanctions, the findings of fact, and a notification if conduct charges will be pursued and/or continued.
- c. Delivery of this outcome will not be delayed to either party, and should occur as nearly simultaneously as possible, without unnecessarily bringing those in conflict into close proximity to each other. Should any change in outcome occur prior to finalization, all parties will be timely informed in writing, and will be notified when the results of the resolution process become final.
- d. If the investigator concludes that the respondent student or employee did not commit sexual misconduct, FMCC will not pursue discipline against the student or employee. The parties will be informed of their potential rights to exercise a request for an appeal of the determination, if applicable. If an investigator determines that a student did not commit sexual misconduct, the reporting individual has the right to appeal the Investigator's finding of no violation to an Appellate Board within two (2) business days of the decision.
- e. If the investigator concludes that it is more likely than not that the respondent student or employee committed sexual misconduct, FMCC will take the matter very seriously, and will pursue (or continue to pursue) internal disciplinary proceedings against the respondent. After receiving the investigator's decision, the Title IX Coordinator will refer the matter to the Director of Human Resources (for employees) or Dean for Student Affairs (for students) to determine whether to pursue disciplinary charges, within 2 business days of the investigator's determination. The disciplinary proceedings will then be commenced within 5 business days of the decision to pursue disciplinary charges.

I. Remedial Measures

If the investigation reveals that sexual misconduct did occur, FMCC will take appropriate remedial measures necessary to end such conduct, prevent any such future conduct, and correct any personnel or academic decisions made which are related to the prohibited conduct. Remedies may include, but are not limited to, continuing or commencing any of the above-listed "interim measures." These remedies are separate from, and in addition to, any interim measures that may have been provided prior to the conclusion of the investigation.

XI. Student Discipline for Sexual Misconduct

Student discipline for sexual misconduct will not be handled through FMCC's Code of Conduct. Instead, it will be handled under the following procedure.

A. Student Conduct Charges

1. Following an investigation pursuant to section X of this Policy, which has resulted in a finding that it is more likely than not that the respondent committed one or more acts of sexual misconduct, the Dean for Student Affairs will promptly file charges.
2. All charges shall be presented to the respondent student in written form, and referred to a Student Life Hearing Board.

B. Interim Measures Pending Hearings

1. While a hearing is pending against a student, that student's degrees, grade reports, and transcripts will not be issued until the matter is resolved.
2. "No contact" orders will remain in effect pending the outcome of the hearing.
3. Any interim measures and accommodations may remain in effect pending the outcome of the hearing.
4. Interim Suspension: In certain circumstances, the Dean for Student Affairs, or a designee, may impose a College suspension prior to the hearing before a Student Life Hearing Board.
 - a. *Mandatory Interim Suspension* – If a student accused of sexual misconduct is determined to present a continuing threat to the health and safety of the community, FMCC must subject the respondent student to interim suspension pending the outcome of a conduct process. During an interim suspension, the respondent student shall be denied access to the campus (including classes) and/or all other College activities or privileges for which the respondent student might otherwise be eligible, as the Dean for Student Affairs or his or her designee may determine to be appropriate.
 - b. *Permissible Interim Suspension* – When the respondent is not a student, s/he may be subject to an interim suspension, upon request of the reporting individual or in the discretion of the Dean for Student Affairs:
 - i. when s/he presents a continuing threat to the health and safety of the FMCC community; and
 - ii. consistent with an applicable collective bargaining agreement, employee handbook or policy.
 - c. *Review of Interim Suspension* – FMCC provides both the respondent and the reporting individual, upon request and consistent with FMCC's policies and procedures, a prompt review, reasonable under the circumstances, of the need for and terms of an interim suspension, including potential modification, in which they are allowed to submit evidence in support of their request. Requests to review an interim suspension should be submitted to the Dean for Student Affairs. If a request for review is received from one party, the other party will be notified of the request for review. The Dean for Student Affairs will issue a determination in response to the request, and notify both parties of the determination.

C. Student Conduct Hearings

1. Rights of Students

- Throughout student conduct proceedings, the student respondent and the reporting individual will both have:
 - The same opportunity to be accompanied by an advisor of their choice who may assist and advise the parties throughout the conduct process and any related hearings or meetings. Participation of the advisor in any proceeding is governed by federal law and the Policy.
 - The right to a prompt response to any complaint and to have charge(s) adjudicated in an impartial, timely, and thorough manner by individuals who receive annual training in conducting investigations of sexual violence, the effects of trauma, impartiality, the rights of the respondent, including the right to a presumption that the respondent is “not responsible” until a finding of responsibility is made, and other issues related to sexual assault, relationship violence, and stalking.
 - The right to a hearing process conducted in a manner that recognizes the legal and policy requirements of due process (including fairness, impartiality, and a meaningful opportunity to be heard) and is not conducted by individuals with a conflict of interest.
 - The right to receive advance written or electronic notice of the date, time, and location of any meeting or hearing they are required to or are eligible to attend. Respondents will also be told the factual allegations concerning the violation, a reference to the specific code of conduct provisions alleged to have been violated, and possible sanctions.
 - The right to have a conduct process run concurrently with a criminal justice investigation and proceeding, except for temporary delays as requested by external municipal entities while law enforcement gathers evidence. Temporary delays should not last more than 10 days except when law enforcement specifically requests and justifies a longer delay.
 - The right to offer evidence and to review available relevant evidence in the case file (or otherwise held by FMCC).
 - The right to present evidence and testimony at a hearing.
 - The right to a range of options for providing testimony via alternative arrangements, including telephone/videoconferencing or testifying with a room partition.
 - The right to exclude prior sexual history with persons other than the other party in the conduct process or their own mental health diagnosis or treatment from admittance in College disciplinary stage that determines responsibility. Past findings of relationship violence, stalking, or sexual assault may be admissible in the disciplinary stage that determines sanction.
 - The right to ask questions of the decision maker and via the decision maker indirectly request responses from other parties and any other witnesses present.
 - The right to make an impact statement during the point of the proceeding where the decision maker is deliberating on appropriate sanctions.
 - The right to simultaneous (among the parties) written or electronic notification of the outcome of a conduct proceeding, including the decision, any sanctions, and the rationale for the decision and any sanctions.
 - The right to written or electronic notice about the sanction(s) that may be imposed on the respondent based upon the outcome of the conduct proceeding. For students found responsible for sexual assault, the available sanctions are suspension with additional requirements and expulsion/dismissal.

- Access to at least one level of appeal of a determination before a panel, which may include one or more students, that is fair and impartial and does not include individuals with a conflict of interest.
- The right to have access to a full and fair record of a student conduct hearing, which shall be preserved and maintained for at least five years.
- The right to choose whether to disclose or discuss the outcome of a conduct hearing.
- The right to have all information obtained during the course of the conduct process be protected from public release until the appeals panel makes a final determination unless otherwise required by law.

2. Review of the Case File

The complainant and the respondent will be given the opportunity to review available evidence in the case file, or otherwise in FMCC's possession or control, that may be used in a hearing or investigation and/or may exonerate or show responsibility in the case. FMCC may place reasonable restrictions on access to evidence, such as time, place and manner restrictions, heightened restriction for sensitive information that is not directly relevant to the questions raised in the investigation or hearing, and a limit on students or their advisors of choice engaging in "fishing expeditions" of all records maintained by FMCC that in any way relate to any of the parties. The complainant, the respondent, and their advisors are not entitled to generalized pre-hearing discovery, or to copies of all available evidence, but are instead entitled to access the evidence directly relevant to the specific case, as reasonably determined by FMCC.

3. Hearing Rules

For all disciplinary hearings by the Student Life Hearing Board involving one or more charges of sexual misconduct, the following rules apply:

- a. *Standard of Evidence.* The standard of evidence used to evaluate a charge is a "preponderance of the evidence." Under this standard, a determination must be made on the basis of whether it is more likely than not that the respondent student or employee committed an act of sexual misconduct.
- b. *Presumption of "Not Responsible".* The respondent is presumed to be "not responsible" until FMCC has established evidence, testimony or information that would allow the decision maker to find the respondent responsible.
- c. *Rules of Evidence.* Formal rules of process, procedure, and/or technical rules of evidence, such as those which are applied in criminal or civil court, do not apply in these hearings.
- d. *Student Life Hearing Board Members.*
 - i. Student Life Hearing Board hearings must be conducted by Student Life Hearing Board members who do not have a conflict of interest and who have received annual training on issues related to conducting investigations of sexual misconduct, the effects of trauma, impartiality, the rights of the respondent, including the right to a presumption that the respondent is "not responsible" until a finding of responsibility is made, how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability, FMCC's policies and procedures, and other issues including, but not limited to relationship violence, stalking and sexual assault.

- ii. If the respondent or the complainant wishes to challenge the placement of any member(s) of the Student Life Hearing Board, he or she must raise this issue at the start of the Student Life Hearing Board hearing by bringing the challenge to the attention of the Dean for Student Affairs, who will hear the reasons for such challenge. Any deliberations before the Student Life Hearing Board as to the challenge should be made without the respondent or the complainant present. The Dean for Student Affairs, will determine whether to support the challenge. Any member(s) so removed will be replaced as quickly as possible by the Dean for Student Affairs, or the Student Life Hearing Board hearing may simply proceed without the removed member, at the discretion of the Dean for Student Affairs.
- e. *Notice.* Students must receive reasonable advance written or electronic notice of:
 - i. any meeting they are required to or are eligible to attend,
 - ii. the specific rule, law, Policy and/or Code of Conduct provision(s) alleged to have been violated;
 - iii. the date, time, location and factual allegations concerning the violation;
 - iv. in what manner the specific rule, law, Policy and/or Code of Conduct provision(s) are alleged to have been violated; and
 - v. any possible sanctions.

FMCC may provide notice of the date, time, location and factual allegations that have been reported, specific provisions reported to have been violated, and associated sanctions in multiple notices and/or separate communications. Nothing prohibits FMCC from holding students accountable for violations that are not referenced in the initial charge letter but are learned about from evidence, testimony, or admission at a hearing or during the investigatory process, consistent with FMCC policies and due process, where applicable.

- f. *Timing.*
 - i. A time shall be set for a hearing, not less than five (5) nor more than fifteen (15) business days after the student has been notified of the hearing. Minimum and maximum time limits for scheduling of hearings may be modified at the discretion of the Dean for Student Affairs.
 - ii. Proceedings include timely notice of meetings and timely and equal access to information and evidence.
 - iii. The proceedings are completed within a reasonably prompt, designated timeframe. However, the timeframe may be extended for good cause upon written notice to the complainant and respondent.
- g. *Advisors.* The complainant and the respondent may select any advisor of their own choosing, including an attorney, who must be permitted to assist and advise a complainant or respondent throughout the process, including during the hearing. The complainant and/or the respondent is responsible for presenting his or her own information, and therefore, advisors (including an attorney, when applicable), are not permitted to speak or to participate directly in any hearing before a Student Life Hearing Board. The selection of an advisor is the responsibility of the complainant or respondent. Any costs associated with the advisor are at the expense of the student. Advisors who violate FMCC policies may be removed from a hearing or meeting. A student should select as an advisor a person whose schedule allows attendance at the scheduled date and time for the Student Life Hearing Board hearing because delays will not normally be allowed due to the scheduling conflicts of an advisor. FMCC is not required to recess the hearing or allow the student to replace the banned advisor

with a new advisor. FMCC is not required to limit its capacity to conduct its conduct process due to scheduling or other delays (whether genuine or tactical) by an advisor of choice.

h. *Attending the Hearing.*

- i. The complainant, respondent, and their advisor(s), if any, shall be allowed to attend the entire portion of the Student Life Hearing Board hearing at which information is presented.
- ii. The complaining student may choose to:
 - attend the Student Life Hearing Board in the same room with the respondent;
 - attend the Student Life Hearing Board in the same room but separated by a screen from the respondent;
 - attend the Student Life Hearing Board in the same room with the respondent and police officer present;
 - not attend the Student Life Hearing Board but submit a written statement; or
 - not attend the Student Life Hearing Board and not submit a written statement.
- iii. The respondent may choose to:
 - attend the Student Life Hearing Board;
 - not attend the Student Life Hearing Board but submit a written statement; or
 - not attend the Student Life Hearing Board and not submit a written statement.
- iv. If a respondent student, with notice, does not appear at a Student Life Hearing Board hearing, the information in support of the charges shall be presented and considered, even if the respondent is not present.

i. *Right to Present and Exclude Evidence.*

- i. At any hearing conducted by the Student Life Hearing Board, the complainant and respondent students will be offered an opportunity to present evidence and testimony. FMCC will try to arrange the attendance of witnesses who are members of the FMCC community, if reasonably possible, and who are identified by the complainant and/or respondent, at least two weekdays prior to the Student Life Hearing Board hearing.
- ii. Students will have the right to ask questions of the decision maker and, via the decision maker, indirectly request responses from other parties and any other witnesses present.
- iii. Students will have the right to make an impact statement during the point of the proceeding where the decision maker is deliberating on appropriate sanctions.
- iv. Students will be provided with the opportunity to exclude (1) their own prior sexual history with persons other than the other party in the conduct process and (2) their own mental health diagnosis and/or treatment from admittance in any stage of the disciplinary proceeding where responsibility is determined (including determinations by the Investigator, Student Life Hearing Board, and Appeals Board). However, past findings of relationship violence, stalking, or sexual assault may be admissible in disciplinary stages that determine sanctions. Further, if a complainant engaged in sexual activity with more than one partner in a short time period (as reasonably determined by the institution) and FMCC alleges that the complainant sustained injuries during non-consensual sexual activity with the respondent, the fact of consensual or non-consensual sexual activity with the unrelated individual may be admitted for the limited purpose of addressing how injuries were sustained. Such evidence may not be used to show a pattern of engaging in sexual activity by the complainant or to allege that if the complainant consented to activity with the unrelated individual, she or he was also consenting to sexual activity with respondent.

j. *Privacy and Safety Concerns.*

- i. Hearings normally shall be conducted in private.
 - ii. The Student Life Hearing Board may accommodate concerns for the personal safety, well-being and/or fears of confrontation of the complainant, respondent, and/or other witness during the hearing by providing separate facilities, by using a visual screen, and/or permitting participation by telephone, video tape, written statement or other means, where and as determined in the sole judgment of the Dean for Student Affairs to be appropriate.
- k. *Withdrawal.*
- i. If the respondent withdraws from FMCC while student conduct proceedings are in process, the student does so with charges pending. FMCC reserves the right to adjudicate those charges when/if the student returns to FMCC.
 - ii. The complainant must be permitted to withdraw from the hearing process at any time. If the complainant chooses to withdraw, however, FMCC may choose to proceed with Student Conduct charges, without the complainant's participation. If FMCC continues a hearing or takes action after a complainant withdraws, the complainant has the right to participate as much or as little as the complainant wishes.
- l. *Transcript.* There shall be a single verbatim written record, an unofficial transcript, of all Student Life Hearing Board hearings (not including deliberations). The record shall be the property of FMCC. The respondent and complainant will be given reasonable access to the full and fair record of the hearing, and FMCC will maintain a copy of the record for at least five years after the hearing. If a participant requests an official transcript, FMCC may choose to allow licensed court reporters to make transcripts of a hearing or proceeding, at the expense of the participant in the hearing who requests an official transcript. If one participant creates an official transcript, FMCC may be required to provide that official transcript to the other participant(s) upon request.

4. Determination of Responsibility and Sanctions

- a. After the portion of the Student Life Hearing Board hearing concludes in which all pertinent information has been received, the Student Life Hearing Board will make a finding (by majority vote) as to whether it is more likely than not that the respondent committed sexual misconduct and/or violated any section of the Code of Conduct that the student is charged with violating.
- b. If the Student Life Hearing Board determines by a preponderance of the evidence that the respondent committed sexual misconduct and/or violated the Code of Conduct, the Student Life Hearing Board will then recommend whether to impose a sanction, and the severity of the sanction.
- c. The sanctions that may be recommended by the Student Life Hearing Board include the following:
 - *Educational Sanctions* – Educational sanctions may be imposed in addition to or instead of the aforementioned sanctions. For example, students may be required to submit a paper or write letters of apology. Students may have community service projects or educational workshops assigned.
 - *Order of No Contact* – A student may be restricted from having any contact, either directly or through his/her friends and acquaintances, with another member of the College community. This sanction can include but is not limited to the exclusion from

any campus building or property, and avoidance of a specified College member, whether on College property or not, and placing an affirmative duty on the student to maintain a specified distance away from the designated College member.

- *Administrative Relocation* – A student can be required to relocate to a new classroom assignment during or after the conclusion of the hearing process. This sanction is utilized to ensure the safety and peace of mind of the campus community at the discretion of the Dean for Student Affairs.
 - *Restitution* – A student is required to make payment to the College or to other persons, groups, or organizations for damages incurred as a result of violations of the Code of Conduct.
 - *Official Warning* – A student receives notification from the Dean for Student Affairs or designee, indicating that a violation of the Code of Conduct has occurred and warning that any subsequent violation may be treated more seriously.
 - *Campus Life Probation* – A defined period of time whereby any registered student is given an opportunity to modify his or her behavior or risk more severe sanctions. Any subsequent violation of the Code of Conduct, while on Campus Life Probation, may result in further disciplinary action.
 - *Disciplinary Probation* – A student on disciplinary probation is no longer in good standing with the College. He or she cannot be a member of recognized student organizations, serve as a representative of the College, or participate in intramural, club, or intercollegiate sports for a period of time. [The minimum time is one semester. The maximum time is four semesters.] Any violation of the Code of Conduct by the student during the time he or she is on disciplinary probation may result in suspension or expulsion from the College.
 - *Suspension or Expulsion From One or More Extracurricular Activities* – A student may be temporarily or permanently excluded from one or more extracurricular activities, including inter-scholastic sports and student clubs.
 - *Suspension from the College* – A student may not be a registered student, be present on campus, or attend College sponsored events for any reason while he or she is suspended from the College for a designated period. The minimum length of a suspension is one semester; there is no maximum. The student is not entitled to a refund of any tuition or fees.
 - *Expulsion from the College* – A student may not ever again be a registered student, be present on campus, or attend College sponsored events. The student is not entitled to a refund of any tuition or fees.
- d. The Student Life Hearing Board on Discipline may consider mitigating and aggravating circumstances when choosing whether or not to impose a sanction and the severity of the sanction, including without limitation any or all of the following:
- Nature of the offense;
 - Severity of the damage, injury, or harm resulting from the offense;
 - Whether the respondent promptly took responsibility for his/her actions;
 - Present demeanor of the respondent;
 - Past disciplinary history of the respondent, which includes, without limitation, completion of or pending disciplinary sanctions from past cases;
 - The respondent's honesty, or lack thereof, and the cooperation demonstrated during the investigation of the complaint and subsequent disciplinary proceeding;
 - Whether the charge involved an action directed at another based upon his/her race, religion, ethnicity, national origin, gender, age, physical ability, or sexual orientation;

- The recommendation of associated victims or parties to the incident; and
 - Any other factor deemed relevant by the Student Life Hearing Board.
- e. The Student Life Hearing Board will then submit its findings and recommended sanctions to the Dean for Student Affairs for review.
- f. The Dean for Student Affairs may, following a review of the record, accept or reject the Student Life Hearing Board's determination of fact and the sanction recommendation. The Dean for Student Affairs reserves the right to review and amend any decision of the Student Life Hearing Board.

D. Notification

Within five (5) business days of the receipt of the Student Life Hearing Board's written report and recommendation, the Dean for Student Affairs will notify both parties simultaneously in writing of the result of the investigation, any sanctions imposed, the rationale for the result and the actual sanctions imposed, and the findings of fact, by mailing a copy of results by e-mail and certified mail to the last address provided to the College by the respondent and complainant. Should any change in outcome occur prior to finalization, all parties will be timely informed in writing, and will be notified when the results of the resolution process become final.

The parties will also be informed of their right to appeal the decision to an Appellate Board within two (2) business days of the decision, pursuant to the procedures set forth below.

The decision of the Dean for Student Affairs or his/her designee shall take effect immediately unless otherwise provided for in the student notification, and such decision shall be final except as provided for in the appeal process.

E. Disclosure of Information Following Hearing

Students have the option to choose whether to disclose or discuss the outcome of the Student Life Hearing Board hearing. Unless otherwise required by law, FMCC will protect all information obtained about students during the course of the disciplinary process from public release, until the students' rights to appeal lapse, or the Appeals Board makes a final determination.

F. Appeals Process

1. Grounds for an Appeal

Appeals can be requested for one or more of the following reasons only:

- To determine whether the penalty is inappropriate to the finding of responsibility;
- To determine whether the Student Life Hearing Board's findings are supported by the evidence;
- To determine whether the student's procedural rights were violated;
- To determine whether new evidence, which was unavailable at the original proceeding, has been discovered;

- To review an investigator's final determination that no sexual misconduct violation occurred; and
- To review any portion of a Student Life Hearing Board's final determination regarding a sexual misconduct charge or complaint.

2. Appeals Not Following a Hearing

- A final determination by an investigator or the Dean for Student Affairs that does not follow a hearing may be appealed by the respondent(s) or the complainant to an Appellate Board within two (2) business days of the decision. Such appeals shall be in writing and shall be delivered to the Dean for Student Affairs. Upon receipt of an appeal, the Dean for Student Affairs will confirm that the appeal is supported by one of the reasons listed above.
- If no appeal is submitted to the Dean for Student Affairs within two (2) business days of the decision, the determination of the investigator or Dean for Student Affairs will become final, unless:
 - a. An appeal is filed by the respondent(s), the complainant, and/or the complainant after the deadline, and
 - b. The appellant can establish good cause for the delay in filing the appeal.
- If a proper appeal and submission are filed, the Dean for Student Affairs shall appoint an Appellate Board. All case documentation shall be delivered to each member of the Appellate Board.
- The Dean for Student Affairs shall convene an Appellate Board within ten (10) days of receiving the appeal. The Appellate Board shall reach a determination within ten (10) business days of receiving the appeal.
- The parties will be informed, in writing, of the result of the appeal, the Appellate Board's recommended sanctions, the rationale for the result and for the Appellate Board's recommended sanctions, and the Appellate Board's findings of fact. Delivery of this outcome will not be delayed to either party, and should occur as nearly simultaneously as possible, without unnecessarily bringing those in conflict into close proximity to each other.
- Appellate Board proceedings will be conducted by individuals who have received annual training on issues related to conducting investigations of sexual violence, the effects of trauma, impartiality, the rights of the respondent, including the right to a presumption that the respondent is "not responsible" until a finding of responsibility is made, how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability, FMCC's policies and procedures, and other issues including, but not limited to relationship violence, stalking and sexual assault.

3. Appeals Following a Hearing

- A final determination by the Dean for Student Affairs following a hearing may be appealed by the respondent(s) or the complainant to an Appellate Board within two (2) business days of the decision. Such appeals shall be in writing and shall be delivered to the Dean for Student Affairs. Upon receipt of an appeal, the Dean for Student Affairs will confirm that the appeal is supported by one of the reasons listed above.

- If no appeal is submitted to the Dean for Student Affairs within two (2) business days of the decision, the determination of the Student Life Hearing Board will become final, unless:
 - a. An appeal is filed by the respondent(s) and/or the complainant after the deadline, and
 - b. The appellant can establish good cause for the delay in filing the appeal.
- If the Dean for Student Affairs determines that the appeal falls within one of the above-listed categories, a copy of the official record of the hearing will be made available to the appellant as soon as it is available.
- Once the appellant receives the hearing record, the appellant will have five (5) business days from his or her review of the hearing record to present his/her reasons for the appeal with supporting documentation. The other party must be provided with notice of the appeal, with access to the same evidence made available to the appellant (including the hearing record), and with the same opportunity to submit supporting documentation. However, the other party is not required to submit supporting documentation.
- If the appellant fails to submit supporting documentation within five (5) business days after review of the hearing record, the determination of the Student Life Hearing Board will become final, unless:
 - a. The appellant's submission is filed after the deadline, and
 - b. The appellant can establish good cause for the delay in filing the submission.
- If a proper appeal and submission are filed, the Dean for Student Affairs shall appoint an Appellate Board. The submission, hearing record, and all case documentation shall be delivered to each member of the Appellate Board.
- The Dean for Student Affairs shall convene an Appellate Board within ten (10) days of receiving the appellant's submission. The Appellate Board shall reach a determination within ten (10) business days of receiving the appellant's submission.
- The parties will be informed, in writing, of the result of the appeal. The parties will also be informed in writing of the Appellate Board's recommended sanctions, the rationale for the result and for the Appellate Board's recommended sanctions, and the Appellate Board's findings of fact. Delivery of this outcome will not be delayed to either party, and should occur as nearly simultaneously as possible, without unnecessarily bringing those in conflict into close proximity to each other.

G. Transcript Notations

If a student is suspended or expelled after being found responsible for sexual misconduct, FMCC must make a notation on the student's transcript that they were "suspended after a finding of responsibility for a Code of Conduct violation" or "expelled after a finding of responsibility for a Code of Conduct violation." If a student withdraws from FMCC while such conduct charges related to sexual misconduct are pending against the student, and declines to complete the disciplinary process, FMCC must make a notation on the

student's transcript that he or she "withdrew with conduct charges pending." These transcript notations can be appealed by contacting the Registrar, 518-736-3622 ext. 8700, registrar@fmcc.edu. Transcript notations for sexual misconduct-related suspensions shall not be removed prior to one year after conclusion of the suspension. Transcript notations for sexual misconduct-related expulsions shall never be removed from a student's transcript. If a finding of responsibility is vacated for any reason, however, the transcript notation must be removed.

XII. Employee Discipline for Sexual Misconduct

Employee discipline will be handled through the Office of Human Resources, in accordance with its procedures for complaints against management confidential employees, or for complaints against an employee who is a member of a union, in accordance with the disciplinary procedures set forth in the applicable Collective Bargaining Agreements.

The disciplinary sanctions which may be imposed on employees who have been found responsible for committing sexual misconduct are the following:

- counseling, warning, or reprimand;
- additional training;
- suspension without pay; or
- discharge.

All parties will be informed of their potential rights to exercise a request for an appeal of the disciplinary determination under the applicable policy.

Engaging in sexual misconduct may also lead to civil and/or criminal action under the New York State Penal Law. Any employee who, in violation of FMCC's policy, engages in sexual misconduct, is acting outside the scope of his or her employment and may be personally liable for such actions and their consequences. In the event legal proceedings are commenced against such an employee, FMCC may decline to provide legal, financial, or other assistance.

XIII. Prohibition of Retaliation

It is a violation of federal and state law and this policy for any employee or student to retaliate against any student or employee for exercising any rights or responsibilities under the Violence Against Women Act, the Clery Act, and/or Title IX. This includes retaliating against a student or employee who reports an incident of an incident of sexual misconduct in good faith, or furnishes information or participates in any manner in an investigation of such a report, or any hearing related to such report. Retaliation includes any conduct directed at someone because he or she engaged in such protected activity, which might deter a reasonable student or employee from making or supporting such a report.

Retaliation is unlawful and will not be tolerated. FMCC will protect students and employees from retaliation by FMCC, any student, any employee, the respondent, and/or their friends, family and acquaintances within FMCC's jurisdiction. Any individual found to have engaged in retaliation will be subject to disciplinary action, up to and including, termination of employment and/or dismissal from FMCC.

Any employee or student who feels as though someone has subjected him or her to retaliation as a result of a report or participation into the investigation of a report should contact Arlene Spencer, Title IX Coordinator, Student Welcome Center, A111, 518-736-3622 ext. 8100, arlene.spencer@fmcc.edu, immediately.

XIV. Institutional Crime Reporting

Reports of certain crimes occurring in certain geographic locations will be included in the FMCC Clery Act Annual Security Report in an anonymized manner that neither identifies the specifics of the crime or the identity of the reporting individual or victim/survivor.

Contact Information:

- Arlene Spencer, Title IX Coordinator
Student Welcome Center, A111
518-736-3622 ext. 8100
arlene.spencer@fmcc.edu
- Davida Capece, Public Safety Office
Physical Education Building, P144
518-736-3622 ext. 8405
dcapece@fmcc.edu

FMCC is obligated to issue timely warnings of Clery Act crimes occurring within relevant geography that represent a serious or continuing threat to students and employees (subject to exceptions when potentially compromising law enforcement efforts and when the warning itself could potentially identify the reporting individual or victim/survivor). A reporting individual will never be identified in a timely warning.

Reporting Aggregate Data to the New York State Education Department (NYSED)

FMCC will annually report to NYSED the following information about reports of relationship violence, stalking and sexual assault:

- a. The number of such incidents that were reported to the Title IX Coordinator.
- b. Of those incidents in paragraph (a), the number of reporting individuals who sought the institution's judicial or conduct process.
- c. Of those reporting individuals in paragraph (b), the number of cases processed through the Institution's judicial or conduct process.
- d. Of those cases in paragraph (c), the number of respondents who were found responsible through the Institution's judicial or conduct process.
- e. Of those cases in paragraph (c), the number of respondents who were found not responsible through the Institution's judicial or conduct process.
- f. A description of the final sanctions imposed by the institution for each incident for which a respondent was found responsible, as provided in paragraph (d), through the Institution's judicial or conduct process.
- g. The number of cases in the institution's judicial or conduct process that were closed prior to a final determination after the respondent withdrew from the Institution and declined to complete the disciplinary process.
- h. The number of cases in the Institution's judicial or conduct process that were closed because the complaint was withdrawn by the reporting individual prior to a final determination.

NYSED shall create a reporting mechanism for institutions to efficiently and uniformly provide the information outlined in subdivision one of this section. NYSED will create a reporting mechanism for FMCC to annually submit the following information:

- a. How many relationship violence, stalking, and sexual assault incidents were reported to the Title IX Coordinator this year?

- b. From those incidents in paragraph (a), how many reporting individuals wanted to use the student conduct process for adjudication?
- c. How many of these cases were actually processed through the student conduct process?
- d. How many of the respondents in these cases were found responsible?
- e. How many of the respondents in these cases in paragraph (c) were found not responsible?
- f. What sanctions were imposed for each instance where a respondent was found responsible (paragraph [d])?
- g. How many cases closed before adjudication or before finding because the respondent withdrew from the institution?
- h. How many cases closed before adjudication or before finding because the reporting individual withdrew the complaint?

XV. FMCC Partnerships

FMCC has entered into partnerships with providers to:

1. provide sexual assault forensic examination to students;
2. provide legal assistance to students (including both respondents and reporting individuals); and
3. provide victim advocacy and support services to victims of sexual misconduct.

FMCC has also entered into a partnership with the New York State Police regarding the protocols and procedures for referring allegations of sexual misconduct, relationship violence, and stalking, sharing information and conducting contemporaneous investigations regarding such allegations.

Addendum A

*A Plain Language Explanation of Distinctions Between the New York State Penal Law and FMCC's Disciplinary Processes*³

	Criminal Justice System	FMCC Disciplinary System
Goals.	Public safety, deterrence, and punishment.	Education; safety; safe and supportive campus environment.
Governing Law.	New York State Penal Code; New York State Rules of Criminal Procedure (or another state's rules if the crime took place there), Federal Criminal Law, and Rules of Evidence.	Title IX; The Clery Act as amended by the Violence Against Women Act; NYS Education Law sections 129-A and 129-B. More specific rules govern particular Colleges and universities.

³ Originally published by Chantelle Cleary, Title IX Coordinator, University at Albany; Lori Fox, General Counsel, Teachers College; Rachel J. Nash, Associate General Counsel, City University of New York; Andrea Stagg, Deputy General Counsel, Barnard College; and Joseph Storch, Associate Counsel, State University of New York on October 28, 2015.

	Criminal Justice System	FMCC Disciplinary System
How to report and whether there must be action once a report is made.	Crimes involving sexual violence may be reported to campus police (if the campus has police officers), the local police agency, or to the New York State Police. Certain crimes may also be reported to federal law enforcement agents. Once a report is made, the decision whether to investigate is made by the police/law enforcement agency, often in consultation with a District Attorney or other prosecuting agency. An investigation may be conducted without the consent or participation of a reporting individual. The ultimate decision of whether to initiate a criminal prosecution is initially made by a prosecutor. In cases involving felony charges, the final charging decision is made by a Grand Jury.	Victims may disclose sexual violence to various College employees who are designated confidential resources or to others who will try to ensure privacy to the extent consistent with the institution's obligation to provide a safe educational environment. Disclosures made to a confidential resource will not trigger an investigation. When a report is made to the Title IX Coordinator (TIXC) or another Non-Confidential resource, the TIXC will determine whether an investigation is necessary by weighing a request for confidentiality by the reporting individual against the continuing safety of that person and the safety and best interests of the campus community.
Who investigates?	Police or other law enforcement officials.	Investigators employed or retained by FMCC; these individuals may work for different departments within FMCC, including, but not limited to, the police/public safety department, student affairs and academic affairs.
Procedures	See Governing Law. Procedures established by police departments, prosecutors' offices, etc.	FMCC policies and Bylaws, which generally incorporate requirements of Governing Law. Collective bargaining agreements may impact some procedures.
Standard of Evidence.	Crimes must be proven "Beyond a Reasonable Doubt."	A violation of disciplinary rules must be found by a "Preponderance of the Evidence" (more likely than not).

	Criminal Justice System	FMCC Disciplinary System
Confidentiality.	Law enforcement agencies offer some confidential assistance, but a criminal charge and trial must be public.	FMCC offers confidential resources, but a disciplinary proceeding requires that relevant information be shared with those involved.
Privacy.	Criminal trials must be public.	Disciplinary proceedings are kept as private as possible, but information must be shared with certain individuals within the College, the parties, and pursuant to law.
Who are the parties?	The prosecution and defendant. The victim/survivor is not a party, but often the critical witness for the prosecution	FMCC and the respondent are parties, and the reporting individual has certain rights to participate, as the law provides.
Participation in the process.	In limited circumstances, a criminal prosecution can proceed without the participation or cooperation of the reporting individual, but without a reporting individual's participation, it is generally more difficult to prove a crime beyond a reasonable doubt.	Reporting students cannot be required to participate in the FMCC process. However, FMCC will be limited in its ability to respond if a reporting individual does not participate.
Who initiates the proceedings?	A prosecutor, acting on behalf of the state (or the United States in federal cases).	FMCC initiates proceedings. While rules vary from school to school, they must provide an active role for the reporting individual.
Testimony.	In a court, testimony is generally public. Other parties are, through counsel, entitled to cross-examine witnesses.	FMCC provides for alternative approaches that permit students to testify without having other parties in the room and/or to ask cross-examination questions only through the disciplinary panel, investigator, or representative of the reporting individual and/or respondent.
Role of attorneys.	Both the state and the defendant are represented by counsel; counsel may question witnesses.	Parties may be advised by attorneys, but the attorneys' roles are limited to quietly speaking with their clients or passing notes.

	Criminal Justice System	FMCC Disciplinary System
Mental Health and Sexual History.	In New York, a reporting individual's prior sexual and mental health history is generally, but not always, inadmissible in a criminal case. There are limited circumstances under which directly relevant evidence of that kind may be admitted.	Generally, not admissible, but subject to quite limited exceptions. Education Law 129-b permits parties to exclude information about their prior sexual history with persons other than the other party and also to exclude evidence of their own mental health history in the fact-finding phase of the disciplinary process.
Possible Results.	If a prosecution takes place, the defendant may: • plead guilty or "no contest" • have the case dismissed by the judge (on legal grounds) • be found "guilty" or "not guilty" by a judge or jury	In cases that do not involve sexual assault, mediation or similar procedures are permitted if the parties agree. If there is a formal proceeding, the respondent may be found "responsible" or "not responsible" for violations of the institution's rules. Respondents may also accept responsibility before a finding by an adjudicator.
Sanctions.	An individual found guilty may be fined, imprisoned, or both. In some courts, alternative sanctions are sometimes used.	An individual found responsible for violating FMCC policy may be given a range of sanctions (depending on the severity of the conduct and other factors, such as prior judicial history), ranging from a warning to suspension or expulsion from the institution.

CHILD PROTECTION POLICY

Fulton-Montgomery Community College is committed to protecting the safety and well-being of children who participate in College-related programs and activities, whether on or off campus, or utilize campus facilities for activities including, but not limited to, sports camps, academic and personal enrichment programs and research studies. Individuals must conduct themselves appropriately with children who participate in College-related programs and report instances or suspicion of physical or sexual abuse of children.

PROCEDURES

Covered Activity: A program or activity sponsored or approved by the College or a College-affiliated organization.

Covered Person: A person who is responsible for the custody, control or supervision of children participating in the Covered Activity and who is:

- (i) an employee of the College or College-affiliated organization;
- (ii) a College student;
- (iii) a volunteer of the College or College-affiliated organization; or
- (iv) an employee, agent or volunteer.

Child: An individual under the age of seventeen years, who is participating in a Covered Activity. The term “child” shall not include a matriculated student of the College or a person accepted for matriculation.

Children’s Camp: A camp defined under New York Public Health Law §1392.

Physical Abuse: Physical contact with a child by a covered person which is intended to cause, or causes, pain or physical injury, including punching, beating, shaking, throwing, kicking, biting and burning, or directing a child, outside the norm of the supervised activity, to perform physical activity which is intended to cause physical injury.

Sexual Abuse: Engaging in a sexual offense with a child and/or encouraging or promoting sexual performance by a child. Pursuant to the NYS Penal Law Articles 130, 263, and Sections 260.10 and 260.25, sexual offenses include: sexual misconduct, rape, criminal sex acts, forcible touching, persistent sexual abuse, sexual abuse, aggravated sexual abuse, course of sexual conduct against a child, facilitating a sex offense with a controlled substance, sexually motivated felony, predatory sexual assault against a child, and sexual performance by a child. This also includes Penal Law offenses relating to children including endangering the welfare of a child and unlawfully dealing with a child in the first degree. Sexual performance by a child, as defined by the Penal Law, is any behavior which results in touching of the sexual or other intimate parts of a child for the purpose of sexual gratification of the child and/or adult, including touching by the child and/or adult with or without clothing, and all acts as defined by New York State Penal Law Articles 130, 263 and Section 260.10.

Responsible College Official: The employee of the College or College-affiliated organization, who has been designated by the Campus under Section D, Campus Responsibilities.

College-affiliated organization: Fulmont College Association, FMCC Foundation, or any other entity so designated by the Chancellor or Campus President.

A. PROHIBITED CONDUCT

A Covered Person shall not:

1. Be alone with a child, unless the Covered Person is a relative or guardian of the child, unless one-on-one contact is approved in accordance with a determination pursuant to Section D.2 of this policy. In no event shall a Covered Person, who is not a relative or guardian of a child, be alone with the child in a rest room, locker room, shower, sleeping area or vehicle.
2. Engage in physical abuse or sexual abuse of a child.
3. Engage in the use of alcohol or illegal drugs, or be under the influence of alcohol or illegal drugs during Covered Activities.
4. Enable, facilitate or fail to address a child's use of alcohol or illegal/non-prescribed drugs.
5. Contact a child through electronic media, including social media, for the purpose of engaging in any prohibited conduct, including sexual conduct.
6. Offer or make a gift to a child for the purpose of engaging in any prohibited conduct, including sexual conduct.
7. Release a child from a Covered Activity without a written authorization from the child's parent or guardian.

B. REQUIRED CONDUCT

A Covered Person shall:

1. Take all reasonable measures to prevent physical and sexual abuse of a child, including immediately removing a child from potential physical abuse, sexual abuse or prohibited conduct as defined herein.
2. Report immediately any suspected physical abuse or sexual abuse of a child to the campus College Police Department, and provide to the campus College Police Department a written report of suspected physical or sexual abuse of a child. Other reporting requirements not addressed in this Policy may apply, such as the obligations of mandated reporters under New York Social Services Law, who are required to report suspected child abuse or maltreatment when they are presented with a reasonable cause to suspect such abuse or maltreatment has occurred.
3. Comply with the College's Policy on Mandatory Reporting and Prevention of Child Sexual Abuse, Document No. 6504 available on the College-Wide Policies and Procedures webpage: http://www.suny.edu/sunyp/ documents.cfm?doc_id=759
4. Complete all required training developed pursuant to this Policy.

C. RESPONSIBLE COLLEGE OFFICIAL

A Responsible College Official shall:

1. Confirm that the requirements of this Policy have been communicated to Covered Persons (i) – (iii) prior to the commencement of a Covered Activity.
2. Confirm that New York Sex Offender Registry and National Sex Offender Public Registry searches (as described in Campus Responsibilities, below) have been obtained and reviewed for Covered Persons (i) – (iii) prior to the commencement of a Covered Activity.
3. Immediately report allegations of physical abuse or sexual abuse of a child to the campus College Police Department, and complete and provide to the campus College Police Department a written report for each allegation of physical abuse or sexual abuse of a child. Other reporting requirements not addressed in this Policy may apply, such as the obligations of mandated reporters under New York Social Services Law, who are required to report suspected child abuse

or maltreatment when they are presented with a reasonable cause to suspect such abuse or maltreatment has occurred.

4. Notify and coordinate with appropriate campus offices to ensure that allegations of suspected physical abuse or sexual abuse are investigated and addressed appropriately.
5. Confirm that required training on this Policy has occurred prior to the commencement of a Covered Activity for all Covered Persons who are employees, volunteers, students or agents of the State College or a College-affiliated organization.

D. CAMPUS RESPONSIBILITIES

Each campus, System Administration, and College-affiliated organization shall develop procedures to:

1. Designate a Responsible College Official for each Covered Activity.
2. Determine on a limited basis that the first sentence of section A.1. of this Policy, which prohibits a Covered Person from being alone with a child, shall not apply to certain Covered Activities when the pedagogical or health-related nature of the Covered Activity requires such one-on-one contact with a child. Examples may include tutoring, music lessons, speech therapy, and medical, dental or optical services, office hours, escorting a child to his/her parent.
3. Communicate the requirements of this Policy to Covered Persons (i) – (iv).
4. By May 15, 2015 and biennially thereafter, provide for and require training on this Policy for all Covered Persons who are employees, volunteers, students or agents of the State College or a College-affiliated organization prior to the commencement of a Covered Activity.
5. Obtain New York Sex Offender Registry and National Sex Offender Public Registry searches for Covered Persons who are employees, volunteers, students or agents of the State College or a College-affiliated organization and complete a review of such searches not more than ninety (90) days prior to the commencement of a Covered Activity.
 - a. A search of the NY Sex Offender Registry means:
 - i. a search of the file of persons required to register pursuant to Article 6-C of the Correction Law maintained by the NY Division of Criminal Justice Services pursuant to NY Correction Law § 168-b for every level of sex offender (Level 1 through Level 3), which requires an email, CD or hard copy submission of names and identifiers to DCJS as described on the DCJS website www.criminaljustice.ny.gov/nsor/800info_cdsubmit.htm ; and
 - ii. retention of the records of the results of such search. Note that an internet search alone will not meet the requirements of this Policy.
 - b. A search of the National Sex Offender Public Registry means:
 - i. a search by first and last name of the National Sex Offender Public Website maintained by the United States Department of Justice at this link: www.nsopw.gov ; and
 - ii. retention of the records of the results of such search.
6. Provide for the prompt investigation and preparation of written findings by the campus College Police Department of reports of suspected physical abuse or sexual abuse, and if there is reasonable cause to believe a crime has been committed, coordination by the campus College Police Department with other law enforcement officials.
7. Provide a mechanism to report and respond to allegations of retaliation (as described below).
8. Retain documentation of the search results from the New York and National Sex Offender registries for Covered Persons who are employees, volunteers, students or agents of the College or a College-affiliated organization for six (6) years after the covered person has separated from employment.

E. RETALIATION

Retaliatory action against anyone acting in good faith, who has reported alleged physical abuse or sexual abuse in accordance with this Policy, or who has been involved in investigating or responding to allegations of physical or sexual abuse, or who has reported a failure to comply with this Policy, is a violation of this Policy. Retaliatory acts may include, but are not limited to:

- employment actions affecting salary, promotion, job duties, work schedules and/or work locations;
- actions negatively impacting a student's academic record or progress; and
- any action affecting the campus environment, including harassment and intimidation.

PRESIDENT EMERITUS**POLICY:**

The effectiveness of a community college in following its vision, achieving its mission, and reaching its goals depends in large part upon the leadership, dedication, and performance of its Presidents. The Board of Trustees recognizes significant contributions by a President over a career through the awarding of President Emeritus status to selected Presidents at the time of their retirement.

PROCEDURE:**ELIGIBILITY**

The candidate:

- would have to have completed at least ten years of full-time service as President of FMCC
- have **distinguished** service to or for the College
- be recommended unanimously by the Board of Trustees

CONDITIONS

- The title will not be contractual nor will there be any monetary remuneration, the title is honorary
- The candidate must be truly retiring (not a career change) or may be awarded posthumously
- The title will appear in the college catalog in the listings section of professional staff
- Use of the title will not be retroactive

PROCESS

- The Board Personnel Committee recommends and submits reports and/or resumes to the Board by the March Board meeting
- Action on recommendations, and time and place for awarding of Emeritus Status is at the pleasure of the Board

Policy Adopted: May 1993
Policy Revised: July 1993
Policy Revised: January 2015

Fulton-Montgomery Community College
Johnstown NY

PROFESSOR EMERITUS**POLICY:**

The effectiveness of a community college in following its vision, achieving its mission, and reaching its goals depends in large part upon the dedication, competence, and performance of its faculty. The Board of Trustees recognizes significant contributions by the faculty over a career through the awarding of Professor Emeritus status to selected qualified faculty at the time of their retirement.

Therefore, the President shall establish appropriate procedures for awarding Professor Emeritus status.

PROCEDURE:**DISTINGUISHED SERVICE**

The service and impact of the faculty member will be based upon the four areas of faculty evaluation:

- Teaching Effectiveness
- Professional Growth
- College Service
- Community Service

Information may be gathered from the personnel file and other appropriate sources such as current and former colleagues and current and former supervising Administrators. Emphases will be on outlining the impact the individual has had on FMCC over the span of service. Distinguished service includes extraordinary contributions, exceptional activities, and special accomplishments that have resulted in a positive impact on FMCC, its students, and its community.

ELIGIBILITY

The candidate:

- must be retiring (or may be awarded posthumously)
- completed at least 15 years of full-time service at FMCC
- provided distinguished service to or for the College (see section on distinguished service)
- be recommended to the board by the Dean of Academic Affairs, the Provost and Vice President for Academic Affairs, and

CONDITIONS

- Emeritus status would take effect the day after retirement (or the date of Board action if awarded posthumously)
- Emeritus status would be granted to the retirees at the rank held at the time of retirement (minimum rank being Associate Professor) and would carry adjunct salary for the rank held at the time of retirement when retiree is hired as an adjunct.
- The title would not be automatically given to all retirees
- The title would not be contractual

- The title would appear in the college catalog

PROCESS

The following process will be initiated after the receipt of a letter of retirement and will be completed prior to the date retirement takes effect.

- The Provost and Vice President for Academic Affairs will appoint a senior faculty member to review the service record of each retiring faculty member and to outline his or her service and impact in the college (with permission of retiring faculty member).
- The faculty member will present the outline to the Provost.
- The Dean of Academic Affairs and the Provost will review the faculty member's service and impact on the College and make a recommendation to the President.
- The President will make a recommendation if appropriate to the Board of Trustees.
- Action or recommendations for awarding of emeritus status can take place at any Board of Trustees meeting.

Policy Adopted: June 1986
Policy Revised: July 1993
Policy Revised: March 2000
Policy Reviewed: August 2006
Policy Revised: January 2015
Policy Revised: April 2020

Fulton-Montgomery Community College
Johnstown, NY

STUDENT AND ACADEMIC SERVICES FACULTY EMERITUS**POLICY:**

The effectiveness of a community college in following its vision, achieving its mission, and reaching its goals depends in large part upon the dedication, competence, and performance of its professional staff in non-teaching positions. The Board of Trustees recognizes significant contributions by the faculty over a career through the awarding of Position Emeritus status to selected qualified members of the professional staff at the time of their retirement.

Therefore, the President shall establish appropriate procedures for awarding Student and Academic Services Faculty Emeritus status.

PROCEDURE:**DISTINGUISHED SERVICE**

The service and impact of the faculty member will be based upon the four areas of evaluation:

- Effectiveness in Performing Position Duties
- Professional Growth
- College Service
- Community Service

Information may be gathered from the personnel file and other appropriate sources such as current and former colleagues and current and former supervising Administrators. Emphases will be on outlining the impact the individual has had on FMCC over the span of service. Distinguished service includes extraordinary contributions, exceptional activities, and special accomplishments that have resulted in a positive impact on FMCC, its students, and its community.

ELIGIBILITY

The candidate:

- must be retiring (or may be awarded posthumously)
- completed at least 15 years of full-time service at FMCC
- provided distinguished service to or for the College (see section on distinguished service)
- be recommended to the board by Deans(if applicable), Vice President and President

CONDITIONS

- Emeritus status would take effect the day after retirement (or the date of Board action if awarded posthumously)

- Emeritus status would be granted to the retirees at the rank held at the time of retirement and would carry adjunct salary for the rank held at the time of retirement when retiree is hired as an adjunct.
- The title would not be automatically given to all retirees
- The title would not be contractual
- The title would appear in the college catalog

PROCESS

The following process will be initiated after the receipt of a letter of retirement and will be completed prior to the date retirement takes effect:

- The appropriate Vice President will appoint a senior member of the professional staff to review the service record of each retiring faculty member and to outline his or her service and impact in the college (with permission of retiring professional staff member).
 - The faculty member will present the outline to the Vice-President.
 - The Deans(if appropriate) and the Vice President will review the professional staff member's service and impact on the College and make a recommendation to the President.
 - The President will make a recommendation if appropriate to the Board of Trustees.
- Action or recommendations for awarding of emeritus status can take place at any Board of Trustees meeting.

Policy Adopted: July 2000
 Policy Reviewed: August 2006
 Policy Revised: January 2015
 Policy Revised: April 2020

Fulton-Montgomery Community College
 Johnstown, NY

ADMINISTRATOR EMERITUS**POLICY:**

The effectiveness of a community college in following its vision, achieving its mission, and reaching its goals depends in large part upon the leadership, dedication, and performance of its Administrative employees. The Board of Trustees recognizes significant contributions by an Administrator over a career through the awarding of Administrator Emeritus status to be selected at the time of their retirement.

PROCEDURE:**ELIGIBILITY**

The candidate:

- would have to have completed at least fifteen years of full-time service as an Administrative employee at FMCC
- have distinguished service to or for the College
- be recommended unanimously by the Board of Trustees

CONDITIONS

- The title will not be contractual nor will there be any monetary remuneration, the title is honorary
- The candidate must be truly retiring (not a career change) or may be awarded posthumously
- The title will appear in the college catalog in the listings section of professional staff
- Use of the title will not be retroactive

PROCESS

- The President recommends consideration for this honor and directs a member or his/her staff to gather information from the personnel file and appropriate sources such as current and former colleagues and supervisors. Emphasis will be placed on outlining the impact an individual has had on FMCC over the span of service. Distinguished service includes extraordinary contributions, exceptional activities, and special accomplishments that have resulted in a positive impact on FMCC, its employees, its students, and its community.
- At the President's discretion a recommendation may be made to the Board and action on recommendations, and time and place for awarding of Emeritus Status is at the pleasure of the Board

PRESIDENTIAL REVIEW**POLICY:**

The Board shall establish a format for and conduct a presidential review on an annual basis in accordance with the terms and conditions of the contract between the Board and the President.

PROCEDURE:

The Presidential performance review will be conducted annually using the Annual Evaluation Form. Feedback on evaluation areas in the form will be discussed with the President, and this completed form shall be kept in the President's personnel file.

Policy Adopted: May 1993
Policy Reviewed: August 2006
Policy Revised: January 2015

Fulton-Montgomery Community College
Johnstown NY

ACTING PRESIDENT**POLICY:**

In the absence of the President, the Provost and Vice President for Academic Affairs is designated by the Board of Trustees to be the Acting President. The Provost and Vice President for Academic Affairs, when performing the role of Acting President shall have the authority and responsibility of the President. At any time when both the President and the Provost and Vice President for Academic Affairs are off campus for an extended period of time, the President shall determine an officer in charge.

HIRING OF FULL-TIME EMPLOYEES**POLICY:**

Unless subject to collective bargaining agreements or civil service laws, all full-time positions available at the College will be filled through an open search process. (Exceptions identified in Interim Appointments Policy.) This process will include, at a minimum, the posting of the position on campus, and on the College's website. National searches will be conducted for positions as determined by the College President. The process for the hiring of full-time positions will be clearly identified in the College Search Guidelines as developed by the President.

PROCEDURE:

Professional positions staffed on a full-time basis will be subject to hiring procedures as indicated in the 2012 Search Committee Guide.

INTERIM HIRES**POLICY:**

In order to continue College operations, the President may recommend to the Board of Trustees the filling of a position at the College with an interim appointment without conducting an open search for candidates. Interim appointments may be made for up to one year and may serve a maximum of two consecutive years. As soon as is prudent, the College will conduct an open search to fill the position on a permanent basis in accordance with Board Policy 4200. Unless otherwise agreed to in writing before the interim appointment is made, the interim employee shall be eligible to apply for the permanent appointment.

PROCEDURE:

Positions staffed on an interim basis will be subject to hiring procedures as indicated in the 2012 Search Committee Guide.

RETIREMENT PROGRAMS**POLICY:**

It is the Policy of the Board of Trustees to provide SUNY authorized participative retirement plans for all qualified employees of the College. The administration is authorized to establish procedures for handling of all such funds.

Policy Adopted: March 1994
Policy Reviewed: August 2006
Policy Reviewed: January 2015

Fulton-Montgomery Community College
Johnstown, NY

HEALTH INSURANCE FOR RETIREES**POLICY:**

Fulton-Montgomery Community College will continue the current practice regarding the provision of health insurance to eligible employees upon retirement, with the following clarifications:

1. Eligibility: To participate in a College retiree insurance plan an employee must have rendered a minimum of ten (10) years of full-time service to the College and be a minimum of fifty-five (55) years of age, both as of the date of retirement from the College or a minimum of twenty (20) years of full-time service to the College and be a minimum of fifty-two (52) years of age, both as of the date of retirement from the College.
2. Plans:
 - A) Retirees Ages 55-65 and their dependents: Retirees that meet the eligibility requirements above may elect to participate in the College's Regular Health Insurance Plan (s) available to active employees. Or they can seek a reimbursement for joining a non-College plan (see Contributions/Reimbursement below).
 - B) Medicare Eligible Retirees Ages 65+ and dependents that are Medicare Eligible Retirees: Retirees that meet the eligibility requirements above may elect to participate in the College's Medicare Advantage/Supplement Plan(s). Or they can seek a reimbursement for joining a non-College plan (see Contributions/Reimbursement below).
3. Contributions/Reimbursements:
 - A. College's Regular Health Insurance Plan(s) (active employees and ages up to 65): For all eligible retirees, the College shall contribute fifty percent (50%) of the lowest cost health insurance premium that existed July 1, 2014 for both individual and dependent coverage. Thereafter, retirees will be responsible for any increase in premium. In the event, a retiree chooses a retiree health insurance plan *other than offered* by the College, the contribution will not exceed the contribution rates set on July 1, 2014.
 - B. College's Medicare Advantage/Supplement Plan (Medicare Eligible and ages 65 and older): the College shall contribute fifty percent (50%) of the current cost of the College's Medicare Advantage/Supplement Plan. In the event, a retiree chooses a retiree health insurance plan other than the College's Plan, the contribution will not exceed that of the cost of the College's Plan.
4. Plan Availability & Notice: Eligible retirees shall, subject to the same rules applicable to active employees, be free to select health insurance coverage from any of the plans offered by the

College to active employees. Should a health insurance plan in which a retiree has been enrolled no longer be one which is offered to current employees, the retiree shall be afforded notice of the same and an appropriate opportunity to select another plan.

5. Death of Retiree:

Upon the death of a retiree who has been receiving a contribution from the College towards the cost of health insurance coverage, the cost of such coverage shall, on the last day of the month following the month in which death occurred, be borne in its entirety by the surviving dependent(s) of such retiree. Thereafter, the eligible dependents of the retiree may continue on the College's health insurance plan but such dependents shall be responsible for the full cost thereof.

6. Other Plan Rules:

1. When Medicare eligible, a *single* retiree will be required to join the College's Medicare Advantage/Supplement Plan or seek reimbursement for non-College plan. He/she would *not be permitted to stay* on the College's Regular Insurance Plan (which is available to active employee and retirees under age 65).
2. When at the time of retirement the College's regular insurance plan and the College's Medicare Advantage/Supplement Plan **are sponsored by the same carriers** the following shall apply:
 - A *married, Medicare eligible* retiree will be required to join the College's Medicare Advantage/Supplement Plan or seek reimbursement for a non-College plan. The married retiree *would not be permitted to stay* on the College's Regular Insurance Plan (which is available to active employees and retirees under age 65).
 - And if the retiree's spouse is *also* Medicare eligible and retired, *both* the retiree and the spouse will be required to enroll in the College's Medicare Advantage/Supplement Plan or seek reimbursement for a non-College plan.
 - If the retiree is Medicare Eligible and *the spouse is not*, the retiree must join the College's Medicare Advantage/Supplement Plan while the spouse *may remain* on the College's Regular Health Plan until Medicare Eligible or seek reimbursement for a non-College plan.
 - If the retiree is not Medicare Eligible, *but the spouse is* Medicare Eligible and retired, the spouse would be required to join the College's Medicare Advantage/Supplement Plan or seek reimbursement for a non-College plan.
3. When at the time of retirement the College's regular insurance plan and the College's Medicare Advantage/Supplement Plan are **sponsored by different insurance carriers:** married couples *will not be permitted to be split* (as above) between the two types of plans.

Policy Adopted: June 1970
Revised May 1999
Revised April 2001
Revised: September 2006
Revised: April 2007

Fulton-Montgomery Community College
Johnstown NY

Revised: January 2015

SOLICITATION ON CAMPUS**POLICY:**

As an educational institution, Fulton-Montgomery Community College provides an environment that focuses on teaching and learning. As such, student, faculty, and staff shall be free from commercial solicitation and other non-college or non-employee sponsored activities, unless authorized by the President or her/his designee.

NEPOTISM**POLICY:**

Fulton-Montgomery Community College permits the employment of qualified relatives of employees or members of the employee's household or immediate family as long as such employment does not, in the opinion of the college, create actual conflicts of interest. For purposes of this policy, "immediate family" is defined as spouse, child, parent, sibling, grandparent, grandchild, aunt, uncle, first cousin, corresponding in-law, "step" relation or individual residing in the employee's household. Fulton-Montgomery Community College will use sound judgment in the placement of related employees in accordance with the following guidelines:

- Individuals who are related by blood, marriage, or reside in the same household are permitted to work in the same college department, provided that no supervisor-to-subordinate relationship exists. That is, no employee is permitted to work within the "chain of command" when one relative's work responsibilities, salary, hours, career progress, benefits or other terms and conditions of employment could be influenced by another relative.
- Related employees may have no influence over the hours, wages, benefits, career progress and other terms and conditions of the other related staff members.
- Employees who marry while employed, or become part of the same household are treated in accordance with these guidelines.

Any exceptions to this policy must be approved by the Administration of the College.

Consensual/Romantic Relationship Policy**POLICY:**

FMCC is committed to protecting the safety and well-being of its students and staff and maintaining educational and working environments that are free from discrimination and harassment. To that end, the College recognizes that there may be times when faculty or staff may exercise power and authority over other faculty, staff, or students, whether due to current supervisory, instructional, or other professional responsibility, or perceived influence or control over an educational or work experience, a power imbalance is created, which may impede the real or perceived freedom of the faculty, staff, or student not to enter into a sexual or romantic relationship or to terminate or alter that sexual or romantic relationship. A sexual or romantic relationship under these conditions may result in a loss of objectivity and create a conflict of interest in any evaluative, supervisory, instructional, or other professional role.

As such, FMCC prohibits any sexual or romantic relationship when there is an existing supervisory, evaluative, or instructional relationship, or a foreseeable, future supervisory, evaluative or instructional relationship between individuals.

FM will make allowances for current relationships pre-dating this policy. However, if such an *existing* relationship exists, those individuals are required to immediately report the relationship to the Director of Human Resources. The College will then need to arrange alternate supervisory roles to ensure that supervisors in a consensual romantic or sexual relationship with a subordinate be removed from any evaluation of the subordinate, and from any activity or decision that may appear to reward, penalize, or otherwise affect the status of that subordinate.

Please note that any employees that fail to follow the terms of this policy will face disciplinary measures up to and including termination.

Policy Adopted: March 2019

Fulton-Montgomery Community College
Johnstown, NY

SUSPECTED MISCONDUCT AND DISHONESTY**POLICY:**

Fulton-Montgomery Community College considers all of its employees to be professionals in their fields. As professionals, employees of the College will conduct themselves in accordance with the expectations and ethics of their profession, the law, and FMCC's Code of Conduct. Employees who are suspected of misconduct will be investigated and, if found to be true, disciplined in accordance with New York State law, relevant personnel policies, and bargaining unit agreements. Such discipline may include steps up to and including termination. Employees who witness misconduct of others are required to report such actions to the appropriate supervisor, Vice President, Director of Human Resources, or to the President.

PROCEDURES:**Employee Code of Conduct:**

The success and reputation of FMCC significantly rests on the ethical behavior of its staff. Employees are expected to conduct themselves in a responsible and appropriate manner using good judgment and common sense. FMCC's Code of Conduct expects each employee to:

- Maintain a professional demeanor.
- Respect the dignity, property, and well-being of others.
- Practice personal and professional integrity, and to discourage all forms of dishonesty and non-compliance with College regulations or local, state, federal laws.
- Obligation to promptly report suspected violations of the standards to a College administrator, Human Resources, or College Leadership. Reports should be made using the College Incident Report form and follow procedures outlined under the Board Whistleblower policy.

When in doubt about the propriety of a proposed course of action, staff should seek counsel from administrators in determining the right and appropriate course of conduct.

Employees should be aware that the College does not tolerate certain acts or behaviors which are unproductive or detrimental to the College. Although it is impractical to identify all types of inappropriate conduct, these acts include but are not limited to:

- Insubordination.
- Falsification of Records.

- Neglect of duty.
- Willful abuse, misuse for personal purposes, theft or failure to return College property.
- Taunting or bullying of staff, students, parents, contractors or others affiliated with the College.
- Engaging in discourteous, obscene, disrespectful, or rude behavior toward staff, students, parents, contractors or others affiliated with the College.
- Disruptive behavior which interferes with the ability of others to perform their duties.
- Fighting, instigating conflict or provoking a fight.
- Failure to maintain reasonably professional attire and grooming.
- Failure to disclose conflicts of interest.
- Violation of other Board Policies.
- Breaches of confidentiality under Family Educational Rights and Privacy guidelines (FERPA).
- Failure to cooperate during a College investigation.

Employees who are suspected of misconduct will be disciplined in accordance with New York State laws, Federal laws, and/or collective bargaining unit agreements. Steps taken by the College may lead to disciplinary action up to and including discharge.

EMPLOYEE RECOGNITION AND RECOGNITION FUNDS**POLICY:**

It is common practice among colleges to recognize employees for work related activities and years of service. The Board authorizes the use of College facilities and funds for these purposes, however, does not condone use of College funds for "Sunshine Fund" purposes, e.g., birthdays, personal celebrations, illnesses, death in family, etc. The President is authorized to develop and implement procedures to recognize employee performance.

PROCEDURE:**Futures Matter Award**

Eligibility: Any individual employee or team of full-time, part-time, adjunct, non-student employees, or team with student participation.

Criteria: This is an award that recognizes excellence in work performance and/or commendable contributions to the College.

Nomination Process: Made by peers or supervisors using the nomination form and sent to the Institutional Advancement Committee by December 15th. Nominations should include a brief narrative in support of the nominee(s).

Selection Process: The Institutional Advancement Committee will recommend the award candidate(s) to the Leadership Team for approval.

Presentation: On Founders Day at Employee Recognition Ceremony.

Award Format: Certificate of Recognition signed the College President and copy placed in personnel file.

Spirit of Innovation Award

Eligibility: Any individual employee or team of full-time, part-time, adjunct, non-student employees, or team with student participation.

Criteria: This is an award that recognizes a new idea or practice that has enhanced, or has the potential to enhance, the services the College provides to our students, staff, or the FM community. This is an award that recognizes creativity and innovation.

Nomination Process: Made by peers or supervisors using the nomination form and sent to the Institutional Advancement Committee by December 15th. Nominations should include a brief narrative in support of the nominee(s).

Selection Process: The Institutional Advancement Committee will recommend the award candidate(s) to the Leadership Team for approval.

Presentation: On Founders Day at Employee Recognition Ceremony.

Award Format: Certificate of Recognition signed the College President and copy placed in personnel file.

Years of Service:

Eligibility: Regularly scheduled full or part time FM Staff.

Criteria: Awards will be conferred to employees who attain five (5), ten (10), twenty (20), thirty (30), or forty (40) years of service during the academic year. Awards will also be given to persons that have retired or will retire in the academic year being celebrated.

Presentation: On Founders Day at Employee Recognition Ceremony.

Award Format: Commemorative plaque indicating years of service and a non-cash gift may be provided.

President's Award:

Each year the President at his/her discretion may select an individual(s) to be recognized for performance and/or contributions to the College. This award will be presented on Founders Day and will be in the format of the President's choosing.

Policy Adopted: November 1993
Policy Reviewed: August 2006
Policy Revised: January 2015
January 2018

Fulton-Montgomery Community College
Johnstown, NY

CONFLICTS OF INTEREST**I. Conflicts of Interest Protocols**

The College shall honor the terms of this written conflict of interest policy to assure that its Trustees, Officers, and key employees act in the College's best interest and comply with applicable legal, regulatory and ethical requirements. The conflicts of interest policy of the College shall include, at a minimum, the following provisions:

1.1 Procedures

Procedures (See also 4210) for disclosing, addressing, and documenting conflicts of interest and related party transactions to the Board of Trustees, or authorized committee, as appropriate.

1.2 Restrictions

Stipulations that when the Board of Trustees, or authorized committee, as appropriate, is considering a real/potential conflict of interest, the interested party shall not:

- a. be present at, or participate in, any deliberations:
- b. attempt to influence deliberations; and/or
- c. cast a vote on the matter.

1.3. Definitions

Definitions of circumstances that could constitute a conflict of interest.

- a. Interested Person - Any director, officer, or member of a committee with board delegated powers, who has a direct or indirect financial interest, as defined below, is an interested person.
- b. Financial Interest - A person has a financial interest if the person has, directly or indirectly, through business, investment, or family:
 - i. An ownership or investment interest in any entity with which the College has a transaction or arrangement,
 - ii. A compensation arrangement with the College or with any entity or individual with which the College has a transaction or arrangement, or
 - iii. A potential ownership or investment interest in, or compensation arrangement with any entity or individual with which the College is negotiating a transaction or arrangement. Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial.

1.4 Documentation

Requirements that the existence and resolution of the conflict be documented in the records of the College, including in the minutes of any meeting at which the conflict was discussed or voted upon: and,

1.5 Audit-Related Disclosure

Protocols to assure for the disclosures of all real or potential conflicts of interest are properly forwarded to the Audit Committee or Conflicts of interest Committee, as appropriate, or if there is no such Audit of Conflicts Committee, to the Board of Trustees, or another Committee of the Board, as appropriate.

2. Conflicts of Interest Policy

The Conflicts of Interest Policy of the College is required in order to comply with the mandates of Section I of this Article; has been adopted and is maintained the Secretary of the Board or designee.

3. Potential Conflicts Disclosure Statement

The Potential Conflicts Disclosure Statement of the College is maintained by the Secretary or designee.

4. Audit Oversight Policy

If required by statute regulation or contract, or if deemed necessary and practicable by the Board of Trustees, or if mandated by any empowered governmental agency or required by binding contract. The accounts of the College shall be subject to an annual audit report or audit review report prepared by an independent Certified Public Accountant to be overseen by the Board of Trustees, or a designated Audit and Finance, or other, Committee of the Board of Trustees, comprised solely of independent Trustees.

DRUG AND ALCOHOL-FREE WORKPLACE**POLICY:**

The Federal Drug Free Workplace Act of 1988 imposes responsibilities on all recipients of federal grants and contracts, including institutions participating in campus-based student financial aid programs. In compliance with this provision, the Board of Trustees of Fulton-Montgomery Community College is committed to maintaining a safe and healthy work environment free from the influence of alcohol and drugs. Fulton-Montgomery Community College prohibits unauthorized use, possession (including storage in a desk, locker, car or other repository), manufacture, distribution, dispensation or sale of illegal drugs, drug paraphernalia, controlled substances, or alcohol on FMCC premises or on FMCC business in FMCC supplied vehicles or during working hours. No employee will report to work while under the influence of alcohol or any unlawful controlled substance. Violation of this policy by any employee may result in referral for mandatory evaluation/treatment for a substance abuse disorder and/or disciplinary action up to and including termination of employment.

Employees have the right to know the dangers of drug and alcohol abuse in the workplace, the policy about them, and what help is available to combat drug and alcohol problems. Information is available at the College on the dangers of drug and alcohol abuse, through the Office of the Director of Human Resources, our Employee Assistance Program, and the Counseling Office in Student Development. The College will also provide information on community resources available for drug and alcohol counseling programs.

Policy Adopted: June 1997
Policy Reviewed: July 2006
Policy Reviewed: January 2015

Fulton-Montgomery Community College
Johnstown, NY

**MANAGERIAL CONFIDENTIAL
PERSONNEL POLICY
MANUAL
EFFECTIVE SEPTEMBER 1, 2008**

Prepared by David M. Morrow
Vice President for Administration and Finance
Updated March 24, 2009
June, 2014
January 2015
March 2020

Fulton-Montgomery Community College Managerial Confidential Personnel Policy Manual

Table of Contents

INTRODUCTION

A. Managerial Confidential Staff

- A.1 Definition
- A.2 Positions
- A.3. Titles
- A.4 Organizational Chart
- A.5 Position Descriptions

B. Appointments

- B.1 Philosophy
- B.2 Appointments
- B.3 Types of Appointments
 - B.3.1 Annual
 - B.3.2 Two-Year

C. Evaluation

D. Salary System

- D.1. Defined
- D.2. Salary Schedule
- D.3. Longevity

E. Work Year, Release-time and Holidays

- E.1. Work Year
 - E.1.1. Release-time
 - E.1.2. Professional Development
- E.2. Holidays

F. Leaves of Absence

- F.1 Sick
- F.2 Personal
- F.3 Bereavement
- F.4 Jury Duty
- F.5 Family and Medical
- F.6 Military
- F.7 Disability
- F.8 Unpaid
- F.9 Status While on Leave
- F.10 Sick Leave Bank

G. Vacations

- G.1. Carry Forward
- G.2. Maximum Accumulation for Payout
- G.3. Vacation Accrual
- G.4. Vacation Scheduling
- G.5. Vacation Preference

- H. Interruption of College Operations
- I. Insurance
 - I.1 Health Insurance
 - I.1.1. Contribution
 - I.1.2. Buyout
 - I.2. Life
 - I.3. Worker's Compensation
- J. Tuition Assistance
 - J.1 FMCC Tuition Waiver
 - J.2. SUNY Tuition Waiver
- K. Voluntary Termination
 - K.1 Resignation
 - K.1.1 Health Insurance
 - K.1.2 Retirement System
 - K.1.3 Vacation Accrual
 - K.1.4 Personal/Sick Leave
 - K.2 Retirement
 - K.2.1. Health Insurance
 - K.2.2. Retirement Compensation
 - K.2.3. Vacation Accrual
 - K.2.4. Personal/Sick Leave
 - K.2.5 Sick Leave Incentive
- L. Involuntary Termination
 - L.1 Cause
 - L.1.1 Health Insurance
 - L.1.2 Retirement System
 - L.1.3. Vacation Accrual
 - L.1.4. Personal/Sick Leave
 - L.2 Retrenchment
 - L.2.1 Health Insurance
 - L.2.2 Retirement System
 - L.2.3 Vacation Accrual
 - L.2.4 Personal/Sick Leave
- M. Procedures For Resolving Complaints

PERSONNEL POLICIES FOR MANAGERIAL CONFIDENTIAL PERSONNEL

INTRODUCTION

This policy manual does not constitute an employment contract between Fulton-Montgomery Community College and the Managerial Confidential staff of Fulton- Montgomery Community College and may not be relied upon for continued employment. The Board of Trustees will from time to time change these policies in whole or in part.

Fulton-Montgomery Community College shall be under the direction of the President who shall operate the College in accordance with Article 126, of the New York State Education Law, and the “Official Compilation of Codes, Rules and Regulations” 8 NYCRR, Part 600, and the Policies and Bylaws of the Board of Trustees.

In accordance with the Policies and Bylaws of the Board of Trustees and State law, the President shall be responsible for the organization of the College. The President shall develop and maintain a College whose members shall:

1. Carry out the policies of the College.
2. Perform their duties as outlined in approved job descriptions.
3. Perform their duties in conformance with College regulations and procedures.
4. Perform their duties in support of the College's goals and objectives.

The administration of the College shall be structured in such a way that all Managerial Confidential employees are able to carry out their essential responsibilities, which shall be to provide effective support for the planning, implementation, and evaluation of College objectives.

In carrying out their essential responsibilities, Managerial Confidential employees are expected to uphold the highest standards of competence and integrity, to respect individual differences, to provide for human dignity and privacy, and to be guided by the elements of due process.

A. MANAGERIAL CONFIDENTIAL STAFF

A.1. Definition

Any individual employed by the College full time who performs duties in a support position deemed Managerial Confidential by the appropriate authority. Currently, the offices supported by Managerial Confidential staff include the President and all Vice Presidents. All Managerial Confidential positions are classified as Civil Service positions, with the exception of the Administrative Assistant to the President’s Office and Secretary to the Board of Trustees.

A.2. Positions

Positions currently assigned within the Managerial Confidential employment category are covered by these policies as determined by the Board of Trustees.

A.3. Managerial confidential titles include the following:

Title

Administrative Assistant to the President's Office and Secretary to the Board of Trustees

Secretary to the Vice President

Administrative Assistant

All other College employees are excluded from the provisions of this manual.

A.4 Organizational Chart

An Organizational Chart which accurately reflects the structure of the College shall be created and maintained by the President.

A.5 Position Descriptions

Position descriptions shall be kept on file in the Human Resources Office and may be changed as necessary upon the approval of the local Civil Service Officer (excluding positions exempt from Civil Service).

B. APPOINTMENTS

B.1 Philosophy

It is the intent of the College to provide stable and secure employment for Managerial Confidential employees whose performance and conduct meet the expectations of the College as determined by the President, and as set forth in respective job descriptions and annual performance review.

B.2 Appointments

The normal appointment year for Managerial Confidential positions is twelve months with the employment year beginning September 1 of each year and ending August 31 of the following year.

B.3 Types of Appointment

B.3.1. Annual

Newly hired Managerial Confidential shall be appointed to a one year probationary period for their first year of service. Thereafter, upon successful completion of the probationary period and upon recommendation of the President, administrators shall be appointed to a one-year appointment. An annual Managerial Confidential appointment shall be a one-year appointment for a year period from September 1 through August 31 made by the Board of Trustees upon the recommendation of the President. A staff member holding an annual Managerial Confidential appointment will be notified by June 1 of his/her appointment year as to whether his/her appointment will be renewed.

B.3.2 Two-Year

A two-year Managerial Confidential appointment shall be a two-year appointment that is made by the Board of Trustees upon the recommendation of the President

and may be extended annually for an additional year by the Board of Trustees upon the recommendation of the President. A staff member must have served a minimum of five (5) full-time continuous years as a Managerial Confidential in order to be eligible for a two-year career Managerial Confidential appointment. An eligible staff member will be notified by June 1st of his/her fifth full Annual Managerial Confidential appointment year as to whether he/she will be granted a two-year career Managerial Confidential appointment or whether his/her regular Managerial Confidential appointment will be renewed. The annual extension option of a two-year appointment (indicated above) refers to the annual extension of the current appointment into a continuing two year appointment. Staff members holding two-year appointments will be notified by June 1st as to whether the annual option will take effect. If not renewed, the staff member will still have one year to serve on his/her portion of the un-extended two-year career appointment.

C. EVALUATION

The work performance of a Managerial Confidential staff member will be formally evaluated in writing at least once each year by the immediate supervisor of the staff member. New staff on probation may receive more frequent feedback. The qualities to be considered in evaluating members of the staff shall be those which determine their effectiveness in performing their duties and their general contribution to the purposes of the College. The process to be used in the evaluation of employees shall be established by the President.

D. SALARY SYSTEM

D.1. Defined

The President will establish a Management Confidential Secretaries/Secretary to the President salary system which provides appropriate remunerations for all Management Confidential Secretaries and the Secretary to the President. To avoid arbitrary setting of salaries, the system will be based on an analysis of Management Confidential Secretaries/Secretary to the President salaries at other institutions and will reflect the various position classifications when possible. The President will recommend to the Board of Trustees such salary adjustments, as the President may deem advisable.

PROCEDURES (effective September 1, 2014)

The following salary ranges are designed for use in determining salary placement and adjustments and are based on position averages at comparable SUNY community colleges (with 2,500 FTE or less). New Management Confidential Staff will generally be hired at the minimum in the range, however allowances may be made to account for substantial prior experience, special skills, or higher levels of education.

D.2. Salary Ranges*

GRADES	SALARIES
Grade III	\$43,320 - \$57,000
Grade II	\$38,980 - \$48,980
Grade I	\$35,476 - \$45,476

*To be adjusted by the percentage of Management Confidential annual salary increases.

GRADES	Level I	Level II	Level III	Level IV
Grade III	\$43,320	\$47,320	\$52,320	\$57,000
Grade II	\$38,980	\$42,980	\$45,980	\$48,980
Grade I	\$35,476	\$38,476	\$41,476	\$45,476

MANAGEMENT CONFIDENTIAL SECRETARY LEVELS/POSITIONS

Grade III

- Administrative Assistant to the President's Office and Secretary to the Board of Trustees.

Grade II

- Secretary to the Vice President

Grade I

- Administrative Assistant to the Chief Advancement Officer and Executive Director of the Foundation
- Administrative Assistant

REQUEST FOR PROMOTION WITHIN GRADE

Basis for Promotion

Supervisors of Management Confidential Staff may recommend staff for promotion who have demonstrated consistent excellence in carrying out the duties and responsibilities of their position. Evidence of this will be reflected in their annual performance evaluations and in their accomplishments as detailed in a narrative to the President. The narrative will describe the rationale for the request, provide examples of exemplary performance and accomplishments, discuss progress and involvement with the College's strategic goals and initiatives, community involvement, etc.

Eligibility Criteria

An employee requesting a promotion must:

1. Be in their position for a minimum of three (3) years.
2. Have annual performance evaluations that demonstrate excellence in carrying out the duties and responsibilities of their position in each of the last three (3) years.
3. The Supervisor must submit a Promotion Request Narrative. This will be a one-page narrative in support of the request and is to be submitted to the President along with the annual self-evaluation requesting the promotion.
4. Be endorsed by the President.

REQUEST FOR PROMOTION BETWEEN GRADES (NEW JOB)

In the year a Management Confidential Staff employee receives a promotion between grades they would receive the next level that results in a higher salary or 7.5% of base, whichever is greater. In the year of promotion, no increase will be received on base.

D.3. Longevity

Longevity increments in the amount of \$200 per year will be granted to Managerial Confidential employees commencing their sixth year of employment at the College. Longevity increments of \$250 total per year shall be granted with the commencement of a Managerial Confidential employee's sixteenth year and for each subsequent year. Upon the employee's twenty-first year of continuous service and for each subsequent year of service the employee shall be granted a longevity increment of \$300. For purposes of determining annual salary adjustments, percentage increases will be added to base salary only

E. WORK YEAR AND HOLIDAYS

E.1. Work Year

A Managerial Confidential work year is defined as twelve (12) calendar months, beginning on September 1st of each year and ending on August 31 of the following year. Managerial Confidential staff work hours are normally during College office hours. However, Managerial Confidential staff may be required to attend late afternoon and evening meetings and to work as necessary to meet position responsibilities. A work year does not include any of the defined periods of time which the administrator is specifically authorized and permitted to use for holidays, vacations, and leaves. These are pro-rated based on a twelve (12) month work year.

E.1.1. Release Time

-At the discretion of the President or immediate supervisor, release time may be granted to Managerial Confidential staff for college projects and community activities which are scheduled during normal work hours.

-Starting the day after classes end in the Spring semester and lasting through July 31st of that year and for the days of winter session, the work day for the Managerial Confidential staff shall be six-and-one half (6 ½) hours between 7:30 a.m. and 3:30 p.m. with one-half (1/2) hour to be provided for lunch with no reduction in salary. The exception to this will be those occasions when the work schedule requires staff to remain on duty. In such instances, staff will remain on duty without any compensatory time off. This clause pertaining to release time will only be available to Managerial Confidential Staff hired with contractual terms starting prior to 9/1/2012.

E. 1. 2. Professional Development

At the discretion of the President or immediate supervisor travel and professional development will be authorized to encourage participation in activities and associations.

E.2. Holidays

Managerial Confidential staff will receive the following holidays:

Columbus Day
Veterans' Day
Thanksgiving Day
Friday after Thanksgiving Day
President's Day
Good Friday
Memorial Day
Independence Day
Labor Day
Martin Luther King Day

The Christmas holidays shall be from Christmas Day through New Year's Day (inclusive). On years when the Christmas and/or New Year's holidays fall on a Saturday/Sunday, the Monday following New Year's Day will be observed as the holiday. In those years when Christmas Eve falls on a weekday, Christmas Eve will be a holiday also. There will be a minimum of six days observed, a maximum of seven for the holiday break.

In addition, Managerial Confidential employees will receive an additional day for Administrative Assistant's day to be scheduled in advance with prior approval by the College. In the event a Managerial Confidential employee is required to work on a holiday, an optional day may be selected by agreement with the immediate supervisor.

F. LEAVES OF ABSENCE

F.1. . Sick

Annual sick day credit shall be 15 days with an allowable total accumulation of not more than 220 days. When a Managerial Confidential staff member is going to be absent because of sickness, he/she should notify his/her supervisor as soon as possible. Medical verification of sick leave may be required at the discretion of the supervisor. Management Confidential staff are eligible to join the Administrative Sick Bank and are subject to its provisions.

F.2. Personal

Personal leave shall not exceed five (5) days in any year and is not cumulative. Such leave is subject to the approval of the Managerial Confidential staff member's immediate supervisor. Unused personal days are credited toward accumulated sick days.

F.3. Bereavement

Each Managerial Confidential staff member is entitled to three (3) consecutive days of leave in the event of death in his/her immediate family (parents, spouse, offspring, siblings, in-laws). Such days are not considered sick or personal days, nor are they cumulative from year to year in any form.

F.4. Jury Duty

Any Managerial Confidential staff member scheduled for jury duty shall be excused from their regular duties with pay less any compensation received for jury duty. Proof of jury service must be presented to Human Resources.

F.5. Family and Medical

The President may grant leave with or without pay for family care purposes consistent with the Family and Medical Leave Act (FMLA). Management Confidential staff are eligible to join the Administrative Sick Bank and are subject to its provisions.

F.6 Military Leave

Management Confidential staff shall be entitled to military leave as required by Section 242 of the Military Law.

F.7. Disability

A Management Confidential staff member who is on leave because of a disability and who is receiving compensation under the Workmen's Compensation Law is eligible to receive sick leave pay during the disability leave. Sick leave pay must be requested in writing and shall not exceed the difference between the amount of disability compensation and the Management Confidential staff member's regular rate of pay. The time during which such sick leave pay is received shall be deducted from, and may not exceed, the Management Confidential staff member's accumulated sick leave time. Management Confidential staff are eligible to join the Administrative Sick Bank and are subject to its provisions.

F.8. Unpaid Leave of Absence

An unpaid leave of absence up to one (1) year may be granted upon application provided such application is approved by the supervisor and the President.

F.9. Status While On Leave

Managerial Confidential on unpaid leave shall retain, but not accumulate, time towards earned benefits. During an unpaid leave, health insurance premiums will be the responsibility of the Managerial Confidential staff person. .

F.10. Sick Leave Bank

Managerial Confidential Staff shall become part of the Administrator sick leave bank. Specifics can be found in the **Administrative Regulations and Procedures**.

G. VACATIONS**G.1. Carry Forward**

Vacation days shall be taken in the year earned. However, up to ten (10) days may be carried forward upon approval of the President.

G.2. Maximum Accumulation for Payout

Individuals who have not utilized all vacation time earned shall, upon leaving a Managerial Confidential position, will be compensated for not more than thirty-five (35)

unused days based upon a per diem of their current contractual salary. Payment will be pro-rated according to the following accrual schedule: 1-5 years of continuous service as (1.667 per month), more than 5 years of continuous service (2.083 per month). Payment shall include any approved vacation days carried over from the previous year. If at the time of resignation, the annual vacation time used exceeds the vacation time accrued, any amounts due the College would be adjusted in the final paycheck.

G. 3. Vacation Accrual

Vacation days are accrued as follows:

-1 through 5 years of continuous employment as a Managerial Confidential employee 20 vacation days/year (1.667 per month)

-more than 5 years of continuous employment as a Managerial Confidential employee 25 vacation days/year (2.083 per month)

For those College employees who accept a Managerial Confidential appointment, vacation and sick time will be accrued based on their original date of hire at the College consistent with the accrual schedule outlined above.

G.4. Vacation Scheduling

Vacation should be scheduled to minimize department/division interruptions and must be approved in writing, in advance, by the appropriate administrative supervisor.

G.5. Vacation Preference

Total years of service at FMCC will be utilized as a criterion in the scheduling of preferred vacation time within the employees' respective department.

H. INTERRUPTION OF COLLEGE OPERATIONS

Managerial Confidential staff are expected to be on duty unless the College officially closes. In the event of an emergency, Managerial Confidential may be designated as essential personnel and as such remain on duty until such time as their designation is changed to non-essential and be released from duty.

I. INSURANCE

I.1. Health Insurance

I.1.1. Contribution

The College will provide health insurance for managerial confidential staff. The College will pay the full premium cost for managerial confidential staff employed prior to September 1, 2019. Managerial confidential staff employed as of and after September 1, 2019 shall contribute ten percent (10%) of the cost of health insurance premiums.

I.1.2. Buyout

Managerial Confidential staff who are covered by health insurance from another source and who elect not to receive health insurance offered by the College shall receive \$1,250.00 for electing not to receive an individual plan and \$2,500.00 for

electing not to receive a family plan. Staff whose status change during the course of a year and who are no longer eligible for health insurance from another source shall be permitted to receive health insurance and shall receive a prorated health insurance buyout. When both spouses are employed by the College, this benefit will not be available. To be eligible for the health insurance “buy-back”, the employee must document that the employee is covered under another health insurance plan. Thereafter, such employee must provide documentation during the College’s health insurance Open Enrollment Period.

I.2. Life

The College agrees to maintain in full force and effect life and liability insurance coverage with life coverage at two times the annual compensation level.

I.3. Worker's Compensation

Worker's Compensation Insurance is provided for all employees by New York State Law.

I.4. Short Term Disability

The College provides temporary disability benefits as required by New York State Law. The College shall cover the cost of the employee premium contributions.

J. TUITION ASSISTANCE

J.1. FMCC Tuition Waiver

Management Confidential employee's and their dependents (spouse and children claimed on tax returns) are to be granted tuition free entrance for credit, non-credit, or audit to any courses offered by the College, subject to all regular conditions for offering any courses assigned an official FMCC number by the College, subject to all regular conditions for offering any course. Employee tuition waivers will be available only to the items identified as tuition by the College. Dependents of those Management Confidential employees who die or are totally disabled while in the employ of the College shall, for a period of ten (10) academic years following death or disablement, be granted the foregoing tuition-free benefit.

J.2. NY Tuition Waiver

FMCC receives a SUNY allotment from which it draws to assist the professional staff financially in pursuing work-related courses at other SUNY colleges and universities. Management Confidential employees are eligible to receive SUNY tuition waivers upon employment subject to the following considerations:

1. that the coursework be taken at a SUNY institution
2. that the coursework be approved by the appropriate supervisor, respective Vice President or President, and be directly related to the individual's position at FMCC.
3. that each qualified applicant receives a prorated amount of the tuition and fees for each semester. The President is authorized to establish procedures for the distribution of SUNY tuition waivers. It is understood that continuation of this policy is contingent upon the continued availability of the SUNY allotment. SUNY tuition waiver forms are available from the Director of Business Affairs Office.

K. VOLUNTARY TERMINATION

A Managerial Confidential employee who resigns, retires, or fails to return from or fulfill the conditions of a paid or unpaid leave shall be considered to have voluntarily terminated his/her employment.

K.1. Resignation

The following terminal benefits will be provided to a Managerial Confidential employee who resigns pursuant to the foregoing.

K.1.1. Health Insurance

Coverage will continue until the last day of the month in which the employee's resignation is effective.

K.1.2. Retirement System

The College will continue to make contributions to the Employee's Retirement system through the effective date of resignation. Employees with vested rights in a retirement system will retain those rights. Employees in the Tier 3, 4, 5 and 6 retirement classification who are not vested upon resignation may be eligible to withdraw the personal contributions they have made to the ERS retirement system, based upon the regulations dictated by the appropriate retirement plan.

K.1.3. Vacation Accrual

On the last effective day of employment with the College, Managerial Confidential employees who resign will be paid at their regular salary rate through the final date of employment for all accrued vacation time to a maximum of thirty-five (35) days. Payment will be pro-rated according to the following accrual schedule: 1-5 years of continuous service as (1.667 per month), more than 5 years of continuous service (2.083 per month). Payment shall include any approved vacation days carried over from the previous year. If at the time of resignation, the annual vacation time used exceeds the vacation time accrued, any amounts due the College would be adjusted in the final paycheck.

K.1.4. Personal/Sick Leave

It is not the policy of the College to make payments at the time of resignation for any unused personal/sick leave time.

K.2. Retirement

It is the Policy of the Board of Trustees to provide SUNY-authorized participative retirement plans for all qualified employees of the College. The administration is authorized to establish procedures for handling of all such funds. Requirements applicable to retirement shall be in accord with an employee selected retirement system as well as applicable state statutes.

Employees planning to retire should provide the College with as much advance notice as possible, but thirty (30) calendar days advance notice is required. The following describes the terminal and other benefits available to personnel leaving the employ of the College by reason of retirement. Employees shall also have the right to participate in the New York State Deferred Compensation Plan.

K.2.1. . Health Insurance

Coverage will continue until the last day of the month in which the employee's retirement is effective. Continuation of coverage for retired employees will be subject to the policies in effect at the time of retirement.

K.2.2. Retirement Compensation

Full-time Managerial Confidential staff may at their option, elect retirement effective upon reaching fifty-five years of age and having attained at least ten (10) of continuous full-time service with the College. Staff will receive \$100 per year for each of the first (10) ten years of service and \$150 per year for each year thereafter, to a maximum of \$2,500. This benefit will only be available to those Managerial Confidential staff employed prior to September 1, 2008. There may be occasions when the Board of Trustees will offer a retirement incentive for the Managerial Confidential employees. During those occasions such an incentive will supersede the retirement compensation levels identified above.

K.2.3. Vacation Accrual

The College will pay retirees at their regular salary rate at the time of retirement for all accrued vacation at the time of retirement to a maximum of thirty-five (35) days.

Payment will be pro-rated according to the following accrual schedule: 1-5 years of continuous service as (1.667 per month), more than 5 years of continuous service (2.083 per month). Payment shall include any approved vacation days carried over from the previous year. If at the time of resignation, the annual vacation time used exceeds the vacation time accrued, any amounts due the College would be adjusted in the final paycheck.

K.2.4. Personal/Sick Leave

Upon retirement, Managerial Confidential staff may elect to receive the amount of their accumulated sick leave in cash or to have said balance applied to their Health Insurance premiums in ten percent (10%) increments. This benefit is only available to those Managerial Confidential staff employed prior to September 1, 2008.

K.2.5 Sick Leave Incentive

Those employees at their date of retirement with a minimum of ten (10) years of service, and at least 55 years of age, shall be paid up to 110 days of accumulated sick leave at a rate of \$100 per day. Those employees with a minimum of 20 years of service shall be paid up to 220 days of accumulated sick leave at a rate of \$100 per day. Staff that are eligible to receive benefits under section K.2.2 and K.2.4 Personnel/Sick Leave (above) and who meet the eligibility requirements in K.2.5 shall have the option at retirement of choosing from one or other (not both) of the sick leave incentive plans.

L. INVOLUNTARY TERMINATION

Involuntary termination shall be for cause or retrenchment.

L.1. Cause

The President shall establish procedures for investigating and acting on information about any Managerial Confidential employee which, if substantiated, may result in discipline, up to and including, dismissal for cause. The Civil Service Managerial Confidential staff will be subject

to Civil Service due process rules and regulations. The Secretary to the President serves at the will of the President.

L.1.1. Health Insurance

Coverage will continue until the last day of the month in which the employee's termination for cause is effective subject to any rights the employee may have under federal law (COBRA) to pay for the continuation of coverage.

L. 1.2. Retirement System

The College will continue to make contributions to the Employee's Retirement system through the effective date of termination for cause. Employees with vested rights in a retirement system will retain those rights. Employees in the Tier 3, 4, 5, and 6 retirement classification who are not vested upon termination for cause may be eligible to withdraw the personal contributions they have made to either the ERS or TIAA-CREF retirement systems based on the regulations dictated by the appropriate retirement plan.

L.1.3. Vacation Accrual

On the last effective day of employment with the College, Managerial Confidential employees who are terminated for cause will be paid at their regular salary rate through the final date of employment for all accrued vacation time to a maximum of thirty-five (35) days.

L.1.4. Personal/Sick Leave

It is not the policy of the College to make payments at the time of termination for cause for any unused personal/sick leave time.

L.2. Reorganization and Retrenchment

Notwithstanding provisions outlined above, the President reserves the right to reorganize and terminate positions within the Management Confidential organizational structure. Managerial Confidential employees affected by such action shall be given notice by June 1. Such action shall be effective August 31. Furthermore, the President reserves the right to restructure or reorganize academic or administrative structures, programs or functions; to reallocate resources; or to curtail or eliminate a program or office and the services of the Managerial Confidential employees involved. Managerial Confidential employees affected by such action shall be given notice by June 1. Such action shall be effective August 31 for annual appointees and one year from August 31 for career appointees.

L.2.1. Health Insurance

Coverage will continue until the last day of the month in which the employee's retrenchment is effective. Additionally, Managerial Confidential employees may be entitled to continued coverage under COBRA.

L.2.2. Retirement System

The College will continue to make contributions to the Employee's Retirement system through the effective date of retrenchment. Employees with vested rights in a retirement system will retain those rights. Employees in the Tier 3, 4, 5, and 6 retirement classification who are not vested upon retrenchment may be eligible to withdraw the personal contributions they have made to either the ERS or TIAA-CREF retirement systems based on the regulations dictated by the appropriate retirement plan.

L.2.3. Vacation Accrual

On the last effective day of employment with the College, Managerial Confidential employees who are retrenched will be paid at their regular salary rate through the final

date of employment for all accrued vacation time to a maximum of thirty-five (35) days. Payment will be pro-rated according to the following accrual schedule: 1-5 years of continuous service as (1.667 per month), more than 5 years of continuous service (2.083 per month). Payment shall include any approved vacation days carried over from the previous year. If at the time of resignation, the annual vacation time used exceeds the vacation time accrued, any amounts due the College would be adjusted in the final paycheck.

L.2.4. Personal/Sick Leave

It is not the policy of the College to make payments at the time of retrenchment for any unused personal/sick leave time.

M. Procedure for Resolving Complaints

At times when a Managerial Confidential staff member may have an issue or complaint, such issues or complaints should be addressed with his/her immediate supervisor. If the Managerial Confidential staff member is unable to discuss the matter with his/her supervisor or is unsatisfied with the outcome, he/she should discuss the issue/complaint with the President. The President's decision/resolution of the issue/complaint shall be final.

Management Confidential Employee:

Signature

Date

Policy Adopted: May 2009
Policy Revised: March 2014
Policy Revised: June 2014
Policy Revised: January 2015
Policy Revised: May 2016
November 2016
December 2016
May 2019
March 2020

Fulton-Montgomery Community College
Johnstown, NY

ADMINISTRATIVE PERSONNEL POLICIES



FULTON-MONTGOMERY COMMUNITY COLLEGE

Notice of Non-Discrimination

FM does not discriminate on the basis of race, color, national origin, sex, disability, or age in its activities or programs. The Civil Rights Compliance Coordinators have been designated to handle inquiries regarding non-discrimination policies and can be contacted at: Human Resources Administrator, 2805 State Hwy 67, Johnstown N.Y. 12095 Tel: 518-736-3622 Ext. 8403 (for employee issues) and the Vice President for Student Affairs, 2805 State Hwy 67, Johnstown N.Y. 12095 Tel: 518-736-3622 Ext. 8100 (for student issues).

Fulton-Montgomery Community College Board of Trustees Administrative Personnel Policy Manual

INTRODUCTION

- A. Administrative Staff
 - A.1 Definition
 - A.2 Positions
 - A.3 Organizational Chart
 - A.4 Position Descriptions
- B. Appointments
 - B.1 Philosophy
 - B.2 Appointments
 - B.3 Types of Appointments
 - B.3.1 Annual
 - B.3.2 Two-Year
- C. Evaluation
- D. Salary System
- E. Work Year and Holidays
 - E.1 Release-time for College Projects/and Community Activities
 - E.2 Holidays
- F. Leaves of Absence
 - F.1 1 Sick
 - F.2 Personal
 - F.3 Bereavement
 - F.4 Jury Duty
 - F.5 Sabbatical
 - F.6 Family and Medical
 - F.7 Military
 - F.8 Disability
 - F.9 Unpaid
 - F.10 Status While on Leave
 - F.11 Sick Leave Bank
- G. Vacations
- H. Interruption of College Operations
- I. Insurance
 - I.1 Health Insurance Continuation
 - I.2 Life
 - I.3 Worker's Compensation
- J. Tuition Assistance
 - J.1 FMCC Tuition Waiver
 - J.2 SUNY Tuition Waiver
- K. Teaching

- L. Conversion to Full-Time Faculty Status
- M. Voluntary Termination
 - M.1 Resignation
 - M.1.1 Health Insurance
 - M.1.2 Retirement System
 - M.1.3 Vacation Accrual
 - M.1.4 Personal/Sick Leave
 - M.2 Retirement
 - M.2.2. Vacation Accrual
 - M.2.3 Personal/Sick Leave
- N. Involuntary Termination
 - N.1 Cause
 - N.1.1 Health Insurance
 - N.1.2 Retirement System
 - N.1.3. Vacation Accrual
 - N.1.4. Personal/Sick Leave
 - N.2 Retrenchment
 - N.2.1 Health Insurance
 - N.2.2 Retirement System
 - N.2.3 Vacation Accrual
 - N.2.4 Personal/Sick Leave
- O. Procedure for Resolving Complaints

INTRODUCTION

This policy manual does not constitute an employment contract between Fulton-Montgomery Community College and the Administrative Staff of Fulton-Montgomery Community College and may not be relied upon for continued employment. The Board of Trustees will from time to time change these policies in whole or in part.

A. ADMINISTRATIVE STAFF

A.1 Definition

Any individual employed by the College full or part-time who performs administrative functions, such as the implementation of College policy and/or who has responsibility to hire, dismiss, or discipline other employees shall be classified as an administrative employee.

A.2 Positions

Positions currently assigned within the administrative staff employment category, as well as other titles as may be determined by the Board of Trustees are covered by these policies.

Administrative positions include the following:

Title	Grade
Provost & Vice President for Academic & Student Affairs	Grade V
Associate Provost for Academic and Student Affairs	Grade V
Director of Business Affairs	Grade III
Director of Facilities	Grade III
Chief Advancement Officer	Grade III
Director of Information Technology	Grade III
Associate Dean for Enrollment Management	Grade II
Associate Dean of Academic and Student Affairs	Grade II
Associate Dean of Student Affairs & International Partnerships	Grade II
Director of Academic Support Services	Grade II
Bursar	Grade II
Director of Public Safety	Grade II
Project Director of Liberty Partnership Programs	Grade I
Director of Behavioral Health Workforce Education & Training	Grade I
Senior Accountant	Grade I
Human Resource Manager	Grade I

A.3 Organizational Chart

An Organizational Chart which accurately reflects the structure of the College shall be created and maintained by the President.

A.4 Position Descriptions

Position descriptions shall be kept on file in the Office of Human Resources. The President is authorized to review and revise administrative position descriptions as necessary.

B. APPOINTMENTS

B.1. Philosophy

It is the intent of the College to provide stable and secure employment for those administrative employees whose performance and conduct meet the expectations of the College as determined by the President, and as set forth in respective job descriptions and annual performance review.

B.2. Appointments

The normal appointment year for administrative positions is twelve months with the employment year beginning September 1 of each year and ending August 31 of the following year.

B.3. Types of Appointment

B.3.1. Annual

Newly hired administrators shall be appointed to a one year probationary period for their first year of service. Thereafter, upon successful completion of the probationary period and upon recommendation of the President, administrators shall be appointed to a one-year appointment for a year period from September 1 through August 31 made by the Board of Trustees.

A staff member holding an annual administrative appointment will be notified by June 1 of his/her appointment year as to whether his/her appointment will be renewed.

B.3.2. Two-Year

A two-year administrative appointment shall be a two-year appointment that is made by the Board of Trustees upon the recommendation of the President and may be extended annually for an additional year by the Board of Trustees upon the recommendation of the President. A staff member must have served a minimum of five (5) full-time continuous years as an administrator in order to be eligible for a two-year career administrative appointment. An eligible staff member will be notified by June 1st of his/her fifth full Annual Administrative appointment year as to whether he/she will be granted a two-year career administrative appointment or whether his/her regular administrative appointment will be renewed. The annual extension option of a two-year appointment (indicated above) refers to the annual extension of the current appointment into a continuing two-year appointment. Staff members holding two-year appointments will be notified by June 1st as to whether the annual option will take effect. If not renewed, the staff member will still have one year to serve on his/her portion of the unextended two-year career appointment.

C. EVALUATION

The professional activities of an administrative staff member will be formally evaluated in writing at least once each year by the immediate supervisor of the staff member. During their first year probationary period, administrative staff may be evaluated on a more frequent

basis. The qualities to be considered in evaluating members of the staff shall be those which determine their effectiveness in performing their duties and their general contribution to the purposes of the College. The process to be used in the evaluation of administrative employees shall be established by the President. Input from the administrative staff will be considered in the implementation of evaluation forms and procedures.

C.1. Administrative evaluations are to be conducted annually by the supervisor using the [Administrator Evaluation Form](#) and completed by April 30th of each year.

C.2. Each Administrator is to prepare a Self-Evaluation annually using the [Administrator Self Evaluation Form](#) and completed by th of each year.

D. SALARY SYSTEM

D.1. Defined

The President will establish an administrative staff salary system which provides appropriate remuneration for all administrators. To avoid arbitrary setting of salaries, the system will be based on an analysis of administrative salaries at other institutions and will reflect the various position classifications when possible. The President will recommend to the Board of Trustees such salary adjustments, as the President may deem advisable.

PROCEDURES

The following salary ranges are designed for use in determining salary placement and adjustments and are based on position averages at comparable SUNY community colleges (with 2,500 FTE or less). New Administrators will generally be hired at the minimum in the range, however allowances may be made to account for substantial prior experience, special skills, or higher levels of education.

D.2. Salary Ranges*

GRADES	SALARIES
Grade V	\$94,250 - \$127,111
Grade IV	\$82,300 - \$113,220
Grade III	\$73,030 - \$96,708
Grade II	\$56,682 - \$76,688
Grade I	\$41,522 - \$56,176

*To be adjusted by the percentage of Administrative annual salary increases.

GRADES	Level I	Level II	Level III	Level IV
Grade V	\$94,250	\$104,250	\$114,250	\$127,111
Grade IV	\$82,300	\$89,300	\$97,300	\$113,220
Grade III	\$73,020	\$80,030	\$88,030	\$96,708
Grade II	\$56,682	\$61,682	\$67,682	\$76,688
Grade I	\$41,522	\$45,522	\$50,522	\$56,176

D.3. Request for Promotion Within Grade

D.3.1. Basis for Promotion

Promotions will be approved for Administrators who have demonstrated consistent excellence in carrying out the duties and responsibilities of their position. Evidence of this will be reflected in their annual performance evaluations and in their accomplishments as detailed in their Promotion Request Narrative. In the year an Administrator receives a promotion within grade, they would receive the next level or 7.5% of base, whichever is greater. In the year of the promotion, no increase will be received on base.

D.3.2. Eligibility Criteria

An employee requesting a promotion must:

1. State on their annual self-evaluation their intention to request a promotion.
2. Be in their position for a minimum of three (3) years.
3. Have annual performance evaluations that demonstrate excellence in carrying out the duties and responsibilities of their position in each of the last three (3) years.
4. Submit a Promotion Request Narrative. This will be a one page narrative in support of the request. It will describe the rationale for the request, provide examples of exemplary performance and accomplishments, discuss progress and involvement with the College's strategic goals and initiatives, community involvement, etc. This narrative is to be submitted to their direct supervisor along with the annual self-evaluation requesting the promotion.
5. Be endorsed by the respective Vice President.
6. Promotions will be reviewed by the Leadership Team and the Director of Human Resources.

D.3.3. Request for Promotions between Grades (New Job)

In the year an Administrator receives a promotion between grades they would receive the next level that results in a higher salary or 7.5% of base, whichever is greater. In the year of promotion, no increase will be received on base.

D.4. Annual Salary Increases

At the discretion of the President, Administrators may eligible for annual salary increases to their base pay. Those staff that have not completed their one year probationary period would ineligible for this salary increase.

E. WORK YEAR AND HOLIDAYS

An administrative work year is defined as twelve (12) calendar months, beginning on September 1st of each year and ending on August 31 of the following year. Administrative staff work hours are normally during College office hours. However, administrative staff is required to attend late afternoon and evening meetings and to work as necessary to meet position responsibilities.

A work year does not include any of the defined periods of time which the administrator is specifically authorized and permitted to use for holidays, vacations, and leaves. These are pro-rated based on a twelve (12) month work year.

E.1. Release Time for College Projects and Community Activities

At the discretion of the President, release time may be granted to administrative staff for college projects and community activities which are scheduled during normal work hours.

E.2. Holidays

Consistent with the College calendar, administrators are entitled to all approved holidays. Administrators will observe the same holidays as those identified in the clerical contract (except Secretary's Day). In the event an employee is required to work on a holiday, an optional day may be selected by agreement with the immediate supervisor.

F. LEAVES OF ABSENCE

F.1. Sick

Annual sick day credit shall be 15 days with an allowable total accumulation of not more than 220 days. When an employee will be absent because of sickness, he/she should notify his/her supervisor as soon as possible. Medical verification of sick leave may be required at the discretion of the supervisor.

F.2. Personal

Personal leave shall not exceed four (4) days in any year and is not cumulative. Such leave is subject to the approval of the Administrator's immediate supervisor. Unused personal days are credited toward accumulated sick days.

F.3. Bereavement

Each administrator is entitled to three (3) consecutive days of leave in the event of the death in his/her immediate family (parents, spouse, offspring, siblings, in-laws). Such days are not considered sick or personal days, nor are they cumulative from year to year in any form.

F.4. Jury Duty

Any administrator scheduled for jury duty shall be excused from their regular duties with pay less any compensation received for jury duty. Proof of jury service must be presented to Human Resources.

F.5. Sabbatical

Consistent with the faculty contract, sabbatical leaves of absence may be granted to administrators upon application to the President of the College and approval by the College's Board of Trustees. Such leave shall be consistent with the objectives and priorities of the College. Administrators on sabbatical do not accrue vacation leave, personal leave, or sick leave.

F.6. Family and Medical

The President may grant leave with or without pay for family care purposes consistent with the family and medical leave act.

F.7. Military

Administrative staff shall be entitled to military leave as required by Section 242 of the Military Law.

F.8. Disability

An administrator who is on leave because of a disability and who is receiving compensation under the Workmen's Compensation Law is eligible to receive sick leave pay during the disability leave. Sick leave pay must be requested in writing and shall not exceed the difference between the amount of disability compensation and the administrator's regular rate of pay. The time during which such sick leave pay is received shall be deducted from, and may not exceed, the administrator's accumulated sick leave time.

F.9. Unpaid

An unpaid leave of absence up to one (1) year may be granted upon application provided such application is made one (1) semester in advance of the date the leave is scheduled to begin and that such leave is concurrent with the College's academic year. Applications made in variance with this policy will be granted by the Board of Trustees upon recommendation of the President. Leaves covered by this policy include those directly related to professional development, such as advanced study, exchange teaching or other employment; those which allow for a term in a professional or political office; and those for other personal and professional activities. Administrators granted unpaid leaves of absence as defined by this policy statement will, upon return to active employment status, receive a salary equal to that which they would have received had they worked at the College during such period. Leaves of absence will be granted at the sole discretion of the Board of Trustees.

F.10. Status While On Leave

An administrator on unpaid leave shall retain, but not accumulate, time toward a career appointment or sabbatical leave. In addition, the administrator on return from leave shall have restored all other privileges enjoyed at the inception of such leave. During an unpaid leave, health insurance premiums will be the responsibility of the administrator.

F.11. Sick Leave Bank

A sick leave bank shall be available to administrators and Management Confidential employees. A committee shall be elected to review the sick leave bank. The Administrative Sick Leave Bank Review Committee will consist of three members of the FMCC Administration to be elected each year by majority vote of the Administration and a member of the Management Confidential employees elected annually by majority vote of the Management Confidential employees at a meeting called by the Director of Human Resources. Specifics can be found in the Administrative Regulations and Procedures.

G. VACATIONS

G.1. Vacation days shall be taken in the year earned. However, up to ten (10) days may be carried forward upon approval of the President

G.2. Individuals who have not utilized all vacation time earned shall, upon leaving the College Administration, be compensated for not more than thirty-five (35) unused days based upon a per diem of their current contractual salary.

G.3. Vacation days are earned as follows:

-1 through 5 years of continuous employment as an administrator shall be credited with 20 vacation days/year on September 1.

-more than 5 years of continuous employment as an administrator shall be credited with 25 vacation days/year on September 1.

(For new College employees who accept an administrative appointment, vacation and sick time will be credited based on their original date of hire at the College, consistent with the following accrual schedule: 1-5 years of continuous service as an administrator: 1.667 per month. More than 5 years of continuous service as an administrator: 2.083 per month.

G.4. Vacation should be scheduled to minimize department/division interruptions and must be approved in writing, in advance, by the appropriate administrative supervisor.

H. INTERRUPTION OF COLLEGE OPERATIONS

Administrators are expected to be on duty unless the College officially closes.

I. INSURANCE

I.1. Health Insurance

The College will provide health insurance for full-time administrators. The College will pay the full premium cost for administrators employed prior to September 1, 2019. Administrators employed as of and after September 1, 2019 shall contribute ten percent (10%) of the cost of health insurance premiums.

I.2. Buyout

Administrators who are covered by health insurance from another source and who elect not to receive health insurance offered by the College shall receive \$1,250.00 for electing not to receive an individual plan and \$2,500.00 for electing not to receive a family plan. Staff whose status change during the course of a year and who are no longer eligible for health insurance from another source shall be permitted to receive health insurance and shall receive a pro-rated health insurance buyout. When both spouses are employed by the College, this benefit will not be available. To be eligible for the health insurance “buy-back”, the employee must document that the employee is covered under another health insurance plan. Thereafter, such employee must provide documentation during the College’s health insurance Open Enrollment Period.

I.3. Life

The College agrees to maintain in full force and effect life and liability insurance coverage with life coverage at two times the annual compensation level.

I.4. Worker's Compensation

Worker's Compensation Insurance is provided for all employees by New York State Law.

I.5. Short Term Disability

The College provides temporary disability benefits as required by New York State Law. The College shall cover the cost of the employee premium contributions.

J. TUITION ASSISTANCE

J.1. FMCC Tuition Waiver

Administrator's and their dependents (spouse and children claimed on tax returns) are to be granted tuition free entrance for credit, non-credit, or audit to any courses offered by the College, subject to all regular conditions for offering any courses assigned an official FMCC number by the College, subject to all regular conditions for offering any course. Employee tuition waivers will be available only to the items identified as tuition by the College. Dependents of those administrators who die or are totally disabled while in the employ of the College shall, for a period of ten (10) academic years following death or disablement, be granted the foregoing tuition-free benefit.

J.2. SUNY Tuition Waiver

FMCC receives a SUNY allotment from which it draws to assist the professional staff

financially in pursuing work-related courses at other SUNY colleges and universities. Administrators are eligible to receive SUNY tuition waivers upon employment subject to the following considerations:

J.2.1. that the coursework be taken at a SUNY institution

J.2.2. that the coursework be approved by the appropriate supervisor, Dean and President and be directly related to the individual's position at FMCC.

J.2.3. that each qualified applicant receives a prorated amount of the tuition and fees for each semester.

The President is authorized to establish procedures for the distribution of SUNY tuition waivers. It is understood that continuation of this policy is contingent upon the continued availability of the SUNY allotment. SUNY tuition waiver forms are available from the President's Office.

K. TEACHING

Any administrator may teach a credit or continuing education course offered by FMCC which is scheduled to be offered outside of his/her regular office hours (usually 8:00 a.m. to 5:00 p.m. Monday through Friday) with the approval of the President. The administrator will receive the appropriate compensation as determined by the appropriate faculty salary scale. As with the employment of all full-time and part-time credit or continuing education faculty/instructors, the administrator must be fully qualified to teach the course as determined by the appropriate instructional supervisor.

L. CONVERSION TO FULL-TIME FACULTY STATUS

Administrators may request conversion to full-time faculty status subject to the guidelines established under "Administrative Regulations and Procedures".

Conversion to full-time faculty status will cancel the right to accrue vacation as well as those other rights peculiar to administrators. In the case of unused vacation accruals, administrative employees reverting to full-time faculty status will be paid for up to thirty-five (35) vacation days not liquidated by the effective date of their change in status. Sick leave accruals at the time of the change in status, in excess of the maximum allowed will be forfeited.

M. VOLUNTARY TERMINATION

The administrative staff member who resigns, retires, or fails to return from or fulfill the conditions of a paid or unpaid leave shall be considered to have voluntarily terminated his/her employment. The administrative staff member is expected to provide the College with at least sixty (60) calendar days written notice of voluntary termination if possible.

M.1. Resignation

The following terminal benefits will be provided to administrative employees who resign pursuant to the foregoing.

M.1.1. Health Insurance

Coverage will continue until the last day of the month in which the employee's resignation is effective.

M.1.2. Retirement System

The College will continue to make contributions to the Employee's Retirement system through the effective date of resignation. Employees with vested rights in a

retirement system will retain those rights. Employees in the Tier 3, 4, 5, and 6 retirement classification who are not vested upon resignation may be eligible to withdraw the personal contributions they have made to either the ERS, TRS or TIAA-CREF retirement systems, based upon the regulations dictated by the appropriate retirement plan.

M.1.3. Vacation Accrual

On the last effective day of employment with the College, administrators who resign will be paid at their regular salary rate through the final date of employment for all accrued vacation time to a maximum of thirty-five (35) days. Payment will be pro-rated according to the following accrual schedule: 1-5 years of continuous service as an administrator (1.667 per month), more than 5 years of continuous service as an administrator (2.083 per month). Payment shall include any approved vacation days carried over from the previous year. If at the time of resignation, the annual vacation time used exceeds the vacation time accrued, any amounts due the College would be adjusted in the Administrator's final paycheck.

M.1.4. Personal/Sick Leave

It is not the policy of the College to make payments at the time of resignation for any unused personal/sick leave time.

M.2. Retirement

It is the Policy of the Board of Trustees to provide SUNY-authorized participative retirement plans for all qualified employees of the College. The administration is authorized to establish procedures for handling of all such funds. Requirements applicable to retirement shall be in accord with an employee selected retirement system as well as applicable state statutes.

Employees planning to retire should provide the College with as much advance notice as possible but thirty (30) calendar days advance notice is required. The following describes the terminal and other benefits available to personnel leaving the employ of the College by reason of retirement:

M.2.2. Vacation Accrual

The College will pay retirees at their regular salary rate at the time of retirement for all accrued vacation at the time of retirement to a maximum of thirty-five (35) days. Payment will be pro-rated according to the following accrual schedule: 1-5 years of continuous service as an administrator (1.667 per month), more than 5 years of continuous service as an administrator (2.083 per month). Payment shall include any approved vacation days carried over from the previous year. If at the time of resignation, the annual vacation time used exceeds the vacation time accrued, any amounts due the College would be adjusted in the Administrator's final paycheck.

M.2.3. Personal/Sick Leave

Those employees at their date of retirement with a minimum of ten (10) years of service, and at least 55 years of age, shall be paid up to 110 days of accumulated sick leave at a rate of \$100 per day. Those employees with a minimum of 20 years of service shall be paid up to 220 days of accumulated sick leave at a rate of \$100 per day.

N. INVOLUNTARY TERMINATION

Involuntary termination shall be for cause or retrenchment.

N.1. Cause

The President shall establish procedures for investigating and acting on information about any administrator which, if substantiated, may result in discipline, up to and including,

dismissal for cause. Said procedures will guarantee that due process standards are met. If the President determines that dismissal for cause is warranted, such recommendation will be submitted to the Board of Trustees. The decision of the Board of Trustees will be final.

N.1.1. Health Insurance

Coverage will continue until the last day of the month in which the employee's termination for cause is effective subject to any rights the employee may have under federal law (COBRA) to pay for the continuation of coverage.

N.1.2. Retirement System

The College will continue to make contributions to the Employee's Retirement system through the effective date of termination for cause. Employees with vested rights in a retirement system will retain those rights. Employees in the Tier 3, 4, and 5 retirement classification who are not vested upon termination for cause may be eligible to withdraw the personal contributions they have made to either the ERS, TRS or TIAA-CREF retirement systems based on the regulations dictated by the appropriate retirement plan.

N.1.3. Vacation Accrual

On the last effective day of employment with the College, administrators who are terminated for cause will be paid at their regular salary rate through the final date of employment for all accrued vacation time to a maximum of thirty-five (35) days. Payment will be pro-rated according to the following accrual schedule: 1-5 years of continuous service as an administrator (1.667 per month), more than 5 years of continuous service as an administrator (2.083 per month). Payment shall include any approved vacation days carried over from the previous year. If at the time of involuntary termination/retranchment, the annual vacation time used exceeds the vacation time accrued, any amounts due the College would be adjusted in the Administrator's final paycheck.

N.1.4. Personal/Sick Leave

It is not the policy of the College to make payments at the time of termination for cause for any unused personal/sick leave time.

N.2. Retranchment

Notwithstanding provisions outlined above, the President reserves the right, in the event of financial exigency, to reorganize and terminate positions within the administrative organizational structure. Administrators affected by such action shall be given notice by April 1. Such action shall be effective August 31.

Furthermore, the President reserves the right to restructure or reorganize academic or administrative structures, programs or functions; to reallocate resources; or to curtail or eliminate a program or office and the services of the administrator(s) involved.

Administrators affected by such action shall be given notice by June 1. Such action shall be effective August 31 for annual appointees and one year from August 31 for career appointees.

N. 2.1. Health Insurance

Coverage will continue until the last day of the month in which the employee's retranchment is effective. Additionally, administrators may be entitled to continued coverage under COBRA.

N. 2.2. Retirement System

The College will continue to make contributions to the Employee's Retirement system through the effective date of retranchment. Employees with vested rights in a

retirement system will retain those rights. Employees in the Tier 3, 4, 5, and 6 retirement classification who are not vested upon retrenchment may be eligible to withdraw the personal contributions they have made to either the ERS, TRS or TIAA-CREF retirement systems based on the regulations dictated by the appropriate retirement plan.

N. 2.3. Vacation Accrual

On the last effective day of employment with the College, administrators who are retrenched will be paid at their regular salary rate through the final date of employment for all accrued vacation time to a maximum of thirty-five (35) days.

N. 2.4. Personal/Sick Leave

It is not the policy of the College to make payments at the time of retrenchment for any unused personal or sick time.

O. PROCEDURES FOR RESOLVING COMPLAINTS

At times when an administrator may have an issue or complaint, such issues or complaints should be addressed with his/her immediate supervisor. If the administrator is unable to discuss the matter with his/her supervisor or is unsatisfied with the outcome, he/she should discuss the issue/complaint with the President. The President's decision/resolution of the issue/complaint shall be final.

Policy Adopted: October 2005

Policy Revised: July 2006

Policy Revised: June 2008

Policy Revised: October 2008

Policy Revised: December 2009

Policy Revised: January 2010

Policy Revised: February 2014

Policy Revised: January 2015

Policy Revised: May 2016

Policy Revised: May 2019

Policy Revised: March 2020

Policy Revised: January 2022

Fulton-Montgomery Community College
Johnstown, NY

ARTICLE V

SERIES 5000

INSTRUCTION

POLICY

Awarding of Degrees

Programs of Study

Honorary Associate Degrees

Evans Library

POLICY NUMBER

5000

5010

5020

5030

AWARDING OF DEGREES

The Registrar certifies candidates and recommends through the President to the Board of Trustees the granting (and related appeals) of degrees, certificates and diplomas to those candidates who have fulfilled the requirements for degrees, certificates and diplomas.

The administration may establish procedures for students who have not completed a degree, certificate or diploma to participate in graduation ceremonies in anticipation of completion of his/her degree, certificate, or diploma. No degree, certificate, or diploma will be issued officially to any student who has not completed all of the stated requirements.

Policy Adopted: April 1990
Policy Revised: July 2005
Policy Revised: July 2011
April 2017

Fulton-Montgomery Community College
Johnstown NY

PROGRAMS OF STUDY

Consistent with the mission and goals of the College, credit and non-credit courses and programs of study will be developed and offered for students of FMCC.

Policy Adopted: December 1993
Policy Revised: July 2005

Fulton-Montgomery Community College
Johnstown NY

INSTRUCTION

5020

HONORARY ASSOCIATE DEGREES

Fulton-Montgomery Community College confers honorary Associate degrees to recognize and commend individuals whose life and work exemplify and support the values, educational ideals, and goals of the College. The honorary degree is awarded to persons who are deserving of public recognition as a result of their outstanding contributions to the College, the community, and society. Because of the special nature of the honorary degree, the number of honorary degrees awarded in one year shall not exceed two, it being understood that no obligation exists to grant any.

Policy Adopted: March 1998
Policy Revised: July 2005

Fulton-Montgomery Community College
Johnstown, NY

EVANS LIBRARY

The Evans Library of Fulton-Montgomery Community College makes its collection and services available to students, staff and alumni, as well as to residents of Fulton and Montgomery Counties. Consistent with the College's mission to assist with community and economic development, the Library is also accessible to area schools and businesses.

In compliance with the State University of New York policy supporting open access to resources, the Evans Library provides access to unrestricted and available library materials to eligible members of the SUNY community.

All individuals utilizing library space, collections, and services must adhere to Library regulations and other College policies and regulations.

Intellectual Freedom

Consistent with the ALA Library Bill of Rights and Freedom to Read statement, FM will operate the Evans Library as a forum for information dissemination and creation and for the exchange of ideas which are essential to the preservation of a free society and a creative culture.

Library Bill of Rights

American Library Association

The American Library Association affirms that all libraries are forums for information and ideas, and that the following basic policies should guide their services.

- I. Books and other library resources should be provided for the interest, information, and enlightenment of all people of the community the library serves. Materials should not be excluded because of the origin, background, or views of those contributing to their creation.
- II. Libraries should provide materials and information presenting all points of view on current and historical issues. Materials should not be proscribed or removed because of partisan or doctrinal disapproval.
- III. Libraries should challenge censorship in the fulfillment of their responsibility to provide information and enlightenment.
- IV. Libraries should cooperate with all persons and concerned with resisting abridgment of free expression and free access to ideas.
- V. A person's right to use a library should not be denied or abridged because of origin, age, background, or views.
- VI. Libraries which make exhibit spaces and meeting rooms available to the public they serve should make such facilities available on an equitable basis, regardless of the beliefs or affiliations of individuals or groups requesting their use.

Adopted: June 18, 1948.

Amended February 2, 1961, and January 23, 1980,
inclusion of "age" reaffirmed January 23, 1996,
by the ALA Council.

ARTICLE VI

SERIES 6000

COMMUNITY SERVICE

POLICY

POLICY NUMBER

ARTICLE VII**SERIES 7000****FINANCE****POLICY****POLICY NUMBER**

Budget Transfers	7000
Procurement	7010
College Credit Cards, Telephones and Cell Phones	7011
Contributions	7030
Transfer Management of the Endowment Fund	7040
Investment	7050
Contract Authorization	7080
Naming Program	7090
Asset Inventory and Capitalization	7100
Risk Management	7110
Whistleblower	7120
Veterans Parking Fee Waiver	7130
Tuition Reduction Policy for Early College Programs	7140

BUDGET TRANSFERS

The President or designee will have the authority to approve budget transfers under the following instances:

1. transfers made between accounts within the same budgetary department (except transfers involving full-time salary accounts), and
2. transfers under \$5,000 made between two budgetary departments (except transfers involving full-time salary accounts).

The Board of Trustees will approve all transfers between budgetary departments that exceed \$5,000 and all transfers that affect full-time salary accounts.

The Board of Trustees will receive a written report summarizing budget transfers.

Policy Adopted: February 1992
Policy Revised: October 1995
Policy Reviewed: August 2006

Fulton-Montgomery Community College
Johnstown NY

CHECK SIGNING AUTHORIZATION

As part of the financial internal control processes at the College, checks require the signature of two individuals. The Board of Trustees has designated and authorized that the two individuals that will sign checks for the College are the President and the Vice President for Administration and Finance. In the event of a vacancy in either position, the Board will designate alternate(s) from senior administrative staff members (Grade III or higher).

Since the individuals in the positions designated as check signers change from time to time, the Board further empowers any officer of the Board of Trustees (Chair, Vice Chair, Treasurer, Secretary or any such officer which may later be created by the Board) to sign banking documents making changes in names of individuals in the designated positions of authorized signers to be filed with such financial institutions as approved by the Board of Trustees.

Policy Adopted: July 2020
Policy Revised: September 2021

Fulton-Montgomery Community College
Johnstown NY

PROCUREMENT

GENERAL PROVISIONS

The purpose of this Statement of Purchasing policy is to provide for the fair and equitable treatment of all persons or firms involved in purchasing by Fulton-Montgomery Community College (FMCC); assure that supplies, services, and construction are procured efficiently, effectively, and at the most favorable prices to FMCC; promote competition in contracting; provide safeguards for maintaining a procurement system of quality and integrity; and assure that the FMCC purchasing actions are in full compliance with applicable State and local laws.

ETHICS IN PUBLIC CONTRACTING

GENERAL

FMCC shall adhere to the following code of conduct, consistent with the New York State law:

CONFLICT OF INTEREST

No employee, officer or agent of FMCC shall participate directly or indirectly in the selection or in the award or administration of any contract if a conflict, real or apparent, would be involved. Such conflict would arise when a financial or other interest in a firm selected for award is held by:

1. An employee, officer or agent involved in making the award;
2. His/Her relative (including father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister);
3. His/Her partner, or;
4. An organization which employs, is negotiating to employ, or has an arrangement concerning prospective employment with any of the above.

GRATUITIES, KICKBACKS, AND USE OF CONFIDENTIAL INFORMATION

FMCC officers, employees or agents shall not solicit or accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subcontracts, and shall not knowingly use confidential information for actual or anticipated personal gain.

All items requiring a purchase order will be purchased centrally by the Business Office according to the following policy:

1. Items may be purchased under existing contracts as allowed by New York State General Municipal Law.
2. Items not purchased under such contracts will be subject to the following guidelines:
 - a. In any fiscal year, an item or items of the same general nature whose total purchase price is in excess of \$20,000 (\$35,000 for public works contracts) will be advertised for public bid. In an emergency situation where there is imminent danger to public or private property or the life, health or safety of any individual, the competitive bidding requirements do not apply.

- Public bidding will be advertised for at least five days. Every effort will be made to obtain at least three bids
- b. Items costing \$2,500 or more, and not exceeding \$20,000 (\$35,000 for public works projects) will be purchased only after three written quotations on vendor letterhead have been received. *
 - c. Items costing less than \$2,500 will be purchased directly from the designated vendor.
3. Items will be purchased from petty cash according to the following policy:
- a. Purchase price must be less than or equal to \$50.
 - b. The item must be immediately needed.
 - c. Purchases initiated by Buildings and grounds may be approved up to a maximum of \$75.
4. Mandated sources (NYS Preferred Vendors)
- The college recognizes the value and importance of conducting business with vendors from the NYS Preferred Vendor list and will give these vendors preference in accordance with guidelines and regulations established by New York State. Preferred vendors include Department of Correction, Industries for the Blind, and Industries for the Disabled.
5. General Municipal Law, Section 103, subdivision 5 permits a governing body, acting by vote of at least three-fifths of its total membership, to standardize purchases for a particular type or kind of equipment, material or supplies. Through the process of competitive bidding, the college has acquired several systems and pieces of equipment and hardware that should be adopted and standardized for future projects requiring competitive bidding. For reasons of compatibility, continuity of repair parts, single service companies and the need for College personnel to learn only one system for operational purposes, notwithstanding any other provisions in the policy, it is the intent of the Board of Trustees to standardize on the following systems for future building projects and to include them as in future purchases and competitive bids.
- a. HVAC Controls: Trane control units and Trane's system software.
Trane is a manufacturer of energy and building controls system for HVAC and exterior lighting systems. As a result of several competitively bid capital projects over the period of many years, Trane control units, Trane system software and Trane equipment have been purchased and installed in every college building. For this reason and the reasons cited above, Trane equipment, software and control units are to be the standard for the College energy and building control systems.
 - b. Fire Alarm: Siemens fire alarm system controls and devices.
Siemens is a manufacturer of fire alarm systems to monitor smoke and carbon monoxide detectors. As a result of several competitively bid capital projects over a period of many years, Siemens' fire alarm system and devices have been installed throughout college buildings. Additionally, as part of a 2012 competitively bid capital project, Siemens systems and devices were again installed. In this project, the Campus View Student Housing buildings and the Campus Public Safety Office were fully integrated into the campus system to provide a fully integrated campus-wide system of reporting and monitoring. In all instances Siemens system and devices were installed. For these reasons and the reasons cited above, Siemens is to be the standard for the College fire alarm system.
 - c. Door Hardware: Arrow QL Cylindrical Lever, MLX (Grade 2) Cylindrical Lever and AM/BM Series Mortise Lever and 3000 Series Exit devices.
As part of an October 2015 competitively bid capital project, the College replaced all door hardware with these devices to achieve a one key hierarchy system and a "quick lock" for emergency incidents. For the reasons mentioned above, these devices are to be the future standard.

d. Exterior Lighting: Lithonia brand and type D-Series LED fixtures.

As part of an October 2015 competitively bid campus safety and energy usage reduction capital project, the College replaced all exterior pedestrian walkway lights with this brand and type of lighting. For the reasons mentioned above, this brand and type are to be the future standard.

As a matter of policy, every effort will be made to purchase materials and equipment from vendors in the two sponsoring counties.

The unintentional failure to fully comply with the provisions of General Municipal Law, Section 104-b shall not be grounds to void action taken or give rise to a cause of action against Fulton-Montgomery Community College or any officer or employee thereof.

This policy will be reviewed and revised, if necessary, annually.

*In emergency situations the president may waive this requirement.

Policy Adopted: September 1976

Policy Revised: April 1994

August 1997

March 1999

December 2002

October 2006

November 2008

May 2014

December 2015

April 2017

Fulton-Montgomery Community College
Johnstown, NY

COLLEGE CREDIT CARDS, TELEPHONES AND CELL PHONES**Use of credit cards**

College credit cards may be issued to individual employees. The cards are authorized for college purchases only. Personal use of College credit cards is prohibited. Persons signing for credit cards shall be responsible for the proper use of the card and liable for any unauthorized charges. The Director of Business Affairs shall be charged with the responsibility of monitoring adherence to this policy and enforcement of the procedures. Employees who violate the policy will be subject to disciplinary proceedings as outlined in the Administrative Policy manual.

Use Of Telephones And Cell Phones

College telephones and cell phones are intended for college business. When an employee must use the telephone for other than college business the individual employee must assume the expenses incurred. The Director of Business Affairs shall be charged with the responsibility of monitoring adherence to this policy and enforcement of the procedures. Employees who violate the policy will be subject to disciplinary proceedings as outlined in the Administrative Policy Manual.

Policy Adopted: December 2002
Policy Reviewed: August 2006

Fulton-Montgomery Community College
Johnstown , NY

CONTRIBUTIONS

The Board of Trustees will direct all unsolicited gifts of private property, devise or bequest to the Foundation of Fulton-Montgomery Community College which has been formed solely to receive gifts and administer funds for the benefit of the College.

Such direction will not be considered as a recommendation to accept gifts. Presentations of gifts, bequests, memorials, awards, property, or scholarships shall be accepted at the discretion of the Foundation and recognized by the Board of Directors of the Foundation. Such recognition shall in no case be considered an endorsement of a particular product or business.

The Board of Trustees shall exercise appropriate control with respect to directed gifts to the Foundation by establishing the following policies:

1. It is expected that the Foundation will consult with College officials regarding the acceptability of tangible property or real property (i.e., land, works of art, supplies and equipment) in advance of accepting the items.
2. The President and Chief Advancement Officer and Executive Director of the Foundation of FMCC may tentatively accept contributions subject to the final approval of the Foundation Board of Directors at its next meeting.
3. Acceptance by the Foundation of equipment or services that may require institutional support involving, but not limited to, operating budget expenses or capital investment (outside consulting?), or other expenses whether initial or continued shall be presented to the President's office for Trustee consideration and approval prior to acceptance by the Foundation.
4. It is understood that contributions to the Foundation of tangible property excluding gifts of real property which, by attribute, shall be sold, conveyed or otherwise disposed in order to convert to cash, will become the property of the College and subject to the same controls and regulations that govern the use of the College-owned properties

Policy Adopted: January 1994
Policy Revised: January 1997
Policy Revised: August 2006

Fulton-Montgomery Community College
Johnstown, NY

TRANSFER MANAGEMENT OF THE ENDOWMENT FUND

The Board of Trustees authorizes the Foundation of Fulton-Montgomery Community College, Inc. to administer on behalf of the Board of Trustees of Fulton-Montgomery Community College, the principal and interest associated with the donations made by individuals, corporations and foundations to the College and currently held in the College endowment fund as of August 31, 1997.

Policy Adopted: August 1997
Policy Revised: August 2006

Fulton-Montgomery Community College
Johnstown, NY

INVESTMENT**SCOPE**

This investment policy applies to all moneys and other financial resources available for investment on its own behalf or on behalf of any other entity or individual.

OBJECTIVES

The primary objectives of Fulton-Montgomery Community College (the Colleges investment activities) are in priority order,

- to conform to all applicable federal, state and other legal requirements (legal);
- to adequately safeguard principal (safety);
- to provide sufficient liquidity to meet all operating requirements (liquidity); and
- to obtain a reasonable rate of return (yield).

DELEGATION OF AUTHORITY

The Board of Trustee's responsibility for administration of the investment program is delegated to the Vice President for Administration and Finance who shall establish written procedures for the operation of the investment program consistent with these investment guidelines. Such procedures shall include an adequate internal control structure to provide a satisfactory level of accountability based on a database or records incorporating description and amounts of investments, transaction dates, and other relevant information, and regulate the activities of subordinate employees.

PRUDENCE

All participants in the investment process shall seek to act responsibly as custodians of the public trust and shall avoid any transaction that might impair public confidence in Fulton-Montgomery Community College to govern effectively.

Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the safety of the principal as well as the probable income to be derived.

All participants involved in the investment process shall refrain from personal business activity that could conflict with proper execution of the investment program, or which could impair their ability to make impartial investment decisions.

DIVERSIFICATION

It is the policy of Fulton-Montgomery Community College to diversify at its discretion deposits and investments by financial institution, by investment and instrument, and by maturity scheduling.

INTERNAL CONTROLS

It is the policy of Fulton-Montgomery Community College for all moneys collected by any officer or employee of the College to transfer those funds to the Vice President for Administration and Finance within three (3) days of receipt, or within the time period specified in law, whichever is shorter.

The Vice President for Administration and Finance is responsible for establishing and maintaining an internal control structure to provide reasonable, but not absolute, assurance that deposits and investments are safeguarded against loss from unauthorized use or disposition, that transactions are executed in accordance with management's authorization and recorded properly, and are managed in compliance with applicable laws and regulations.

SECURING OF DEPOSITS

All deposits of the College, in excess of the amount insured under the provisions of the Federal Deposit Insurance Act, are to be secured in accordance with the provisions of General Municipal Law §10. Key excerpts of the law are enumerated below.

1. By a pledge of "eligible securities" with an aggregate "market value" as provided by GML §10.

2. By the eligible "irrevocable letter of credit" issued by a qualified bank other than the bank with the deposits in favor of the College for a term not to exceed 90 days with an aggregate value equal to 100% of the aggregate amount of deposits and the agreed upon interest, if any. A qualified bank is one whose commercial paper and other unsecured short-term debt obligations are rated in one of the three highest rating categories by at least one nationally recognized statistical rating organization or by a bank that is in compliance with applicable federal minimum risk-based capital requirements.

3. By an eligible surety bond payable to the College for an amount at least equal to 100% of the aggregate amount of deposits and the agreed upon interest, in any, executed by an insurance company authorized to do business in New York State, whose claims-paying ability is rated in the highest rating category by a least two nationally recognized statistical rating organizations.

PERMITTED INVESTMENTS

As authorized by General Municipal Law, §11, the Board of Trustees authorizes the Vice President for Administration and Finance to invest moneys not required for immediate expenditure for terms not to exceed its projected cash flow needs in the following types of investments:

- Special time deposit accounts
- Certificates of deposits
- Obligations guaranteed by agencies of the United States of America where the payment of principal and interest are guaranteed by the United States of America
- Obligations of the State of New York
- Obligations issued pursuant to LFL §24.00 or 25.00 (with approval of the State Comptroller) by any municipality, school district or district corporation other than Fulton- Montgomery Community College
- Obligations of public authorities, public housing authorities, urban renewal agencies and industrial development agencies where the general State statutes governing such entities or

- whose specific enabling legislation authorizes such investments
- Certificates of Participation. (COP's issued pursuant to GML§ 109-b)
- Obligations of this College, but only with any moneys in a reserve fund established pursuant to GML §§6-c.6-d.6-e.6-g,6-h.6-j,6-k.6-l.6-m, or 6-n

All investment obligations shall be payable or redeemable at the option of the College within such times as the proceeds will be needed to meet expenditures for purposes for which the moneys were provided and, in the case of obligations purchased with the proceeds of bonds or notes, shall be payable or redeemable at the option of the College within two years of the date of purchase.

AUTHORIZED FINANCIAL INSTITUTIONS AND DEALERS

The College shall maintain a list of financial institutions and dealers approved for investment purposes. All financial institutions with which the College conducts business must be credit worthy. Banks shall provide their most recent Consolidated Report of Condition (Call Report) at the request of the College. Security dealers not affiliated with a bank shall be required to be classified as reporting dealers affiliated with the New York Federal Reserve Bank, as primary dealers. The Vice President for Administration and Finance is responsible for evaluating the financial position and maintaining a listing of proposed depositories, trading partners and custodians. Such listing shall be evaluated at least annually.

PURCHASE OF INVESTMENTS

The Vice President for Administration and Finance is authorized to contract for the purchase of investments:

1. Directly, including through a repurchase agreement from an authorized trading partner.
2. By participation in a cooperative investment program with another authorized governmental entity pursuant to Article 5G of the General Municipal Law where such program meets all the requirements set forth in the Office of the State Comptroller Opinion No. 88-46, and the specific program has been authorized by the Board of Trustees.
3. By utilizing an ongoing investment program with an authorized trading partner pursuant to a contract authorized by the Board of Trustees.

All purchased obligations, unless registered or inscribed in the name of Fulton-Montgomery Community College shall be purchased through, delivered to and held in the custody of a bank or trust company. Such obligations shall be purchased, sold or presented for redemption or payment by such bank or trust company only in accordance with prior written authorization from the officer authorized to make the investment. All such transactions shall be confirmed in writing to the College by the bank or trust company. Any obligation held in the custody of a bank or trust company shall be held pursuant to a written custodial agreement as described in General Municipal Law, §10.

The custodial agreement shall provide that securities held by the bank or trust company, as agent of and custodian for the College, will be kept separate and apart from the general assets of the custodial bank or trust company and will not, in any circumstances, be commingled with or become part of the backing for any other deposit or other liabilities. The agreement shall describe how the custodian shall confirm the receipt and release of the securities. Such agreement shall include all provisions necessary to provide the College a perfected interest in the securities.

REPURCHASE AGREEMENTS

Repurchase agreements are authorized subject to the following restrictions:

- All repurchase agreements must be entered into subject to a Master Repurchase Agreement.
- Trading partners are limited to banks or trust companies authorized to do business in New York State and primary reporting dealers.
- Obligations shall be limited to obligations of the United States of America and obligations guaranteed by agencies of the United States of America.
- No substitution of securities will be allowed.
- The custodian shall be a party other than the trading partner.

Policy Adopted: August 1997
Policy Revised: August 2006
November 2014
February 2015

Fulton-Montgomery Community College
Johnstown, NY

CONTRACT AUTHORIZATION

The Board of Trustees must approve all bids, RFP's long-term contracts (leases, etc.) grant contracts with long-term operating cost implications, and bargaining unit contracts. The Board authorizes the President or designee to approve contractual documents pertaining to the normal operation of the College facilities including service contracts, rental or lease agreements, grants, capital project contracts, employment contracts, and procurement arrangements in accordance with the Board approved purchasing policies. Contracts greater than \$25,000 must be approved by the Board (except those relating to purchases made from State Contracts or grants in which there are no long-term budget impacts). The President will report all contractual and pending contractual arrangements to the Board monthly. All contracts will be documented and filed in a centralized system.

Policy Adopted: October, 1997
Policy Revised: October 2006

Fulton-Montgomery Community College
Johnstown, NY

NAMING PROGRAM

The Board of Trustees directs the President to establish a naming program and process for fund raising purposes which is based on major gifts made in support of Fulton-Montgomery Community College.

Further, the Board of Trustees upon recommendation of the President has the responsibility for accepting names for new or existing structures, individual rooms, or grounds features based on established minimum donation levels.

(See chart on following page)

Naming Opportunities for Fulton-Montgomery Community College

L - Evans Library

V - Communications and Visual Arts Building

A - Administration

C - Classroom

U - Union

F - Foundation House

O - Outdoors

PE - Physical Education Building

TF - Turf Field

	Building	Minimum Contribution Level
U	Union	\$1,000,000
PE	Physical Education	1,000,000
V	Communications & Visual Arts Bldg.	250,000
C	Classroom	1,000,000
A	Administration	500,000
	Daycare/Childcare Center	500,000
F	Foundation House	1,000,000
	Field House	2,000,000
TF	Turf Field	1,000,000
	<i>Suites or Wings</i>	<i>\$75,000-250,000</i>
V	Student Development Suite	250,000
V	Fine Arts Wing	200,000
V	Television Production/Media Communications Suite	250,000
	Student Activities/SGA Center	250,000
	<i>Individual Spaces</i>	<i>\$10,000-250,000</i>
PE	Large Gymnasium	500,000
V	Theater	500,000
C	Radiological Technology Classroom/Lab	250,000
C	Cleanroom-Classroom/Lab	250,000
U	Cafeteria	150,000
O	Perimeter Road	200,000
U	Large Lounge/Community Rm	100,000
C	Lecture Halls (C-110,C-206,C-208)	75,000
C	Financial Technology Center (C-123)	75,000
O	Clock Tower	50,000
C	Laboratory	25,000
O	Sculpture Garden	100,000
O	Athletic Fields (Baseball, Soccer, Softball, etc.)	100,000 each
C	Computer Classroom	25,000
F	Community Room/Lobby	150,000
F	Library	25,000
F	Board Room	25,000
F	Event Room	100,000
C	Classroom	10,000
F	Vestibule	10,000
F	Fireplace	5,000
TF	Locker Room (Men's)	50,000
TF	Locker Room (Women's)	50,000
TF	Bleachers (2)	25,000
TF	Scoreboards (2)	25,000
TF	Lights	25,000
TF	Dugouts (4)	10,000
TF	Bullpens (2)	10,000
TF	Training Room	10,000

Adopted: July 1998

Revised: December 2015

Fulton-Montgomery Community College

Revised: August 2006

Revised: March 2017

Johnstown, NY

Revised: September 2010

Revised: February 2020

Revised: December 2022

Revised: September 2025

ASSET INVENTORY AND CAPITALIZATION

The College shall maintain an inventory of all assets with a value of \$500 or greater. The value shall be determined by using the historical cost for purchased items, and the fair market value at the time of donation for donated items.

For items purchased using grant funds, the College shall also abide by all asset inventory requirements related to the grant.

The College asset inventory shall be updated at least annually.

The College shall capitalize and depreciate assets in accordance with generally accepted accounting principles and applicable governmental laws and regulations. The following establishes the categories of assets, and the dollar thresholds for capitalization and depreciable lives for each category:

<u>Category</u>	<u>Dollar Threshold</u>	<u>Depreciable Life</u>
Land	All items	Not depreciated
Land Improvements and Infrastructure	\$50,000 per project	20 years
Buildings		
General Construction (excavation, shell)	All items	50 years
Components (roof, HVAC, elevators, etc.)	All items	20 years
Building Improvements	\$50,000 per project	20 years
Equipment*		
Equipment	\$2,500 per item	10 years
Computers	\$2,500 per item	5 years
Vehicles	\$2,500 per item	5 years
Library Volumes	All items	10 years
Historic Treasures / Works of Art	All items	Not depreciated

* Equipment as an asset category includes vehicles, computers, furniture, fixtures not included as campus infrastructure or building improvements, and all other items that are not included in other asset categories.

Policy Adopted: September 2003
Policy Revised: August 2006

Fulton-Montgomery Community College
Johnstown, NY

RISK MANAGEMENT

The College shall establish a Risk Management Program that promotes the successful achievement of the College's mission, vision, goals and objectives as well as safeguards the College's assets against loss due to waste, abuse, or errors.

The Board of Trustees will appoint a Risk Management Officer annually who will be responsible for updating and implementing the Risk Management Program. The Risk Management Officer will provide the Board with a periodic report of activities related to the Risk Management Program. The report will include the results of risk assessments, recommendations regarding the acceptance or mitigation of those risks, and the status of planned corrective actions.

Additional policy information related to internal controls is included in the Personnel Series 4000, Section 4320 – Fraudulent Activities.

Policy Adopted: April 2008

Fulton-Montgomery Community College
Johnstown, NY

WHISTLEBLOWER**Background**

As accountability for public institutions continues to gain prominence in the eyes of legislators and the public, protecting the rights of employees who come forward to expose an area of concern becomes increasingly important. The Board of Trustees, through the policy detailed below, affirms its dedication to the quality of the institution and the integrity of its employees by protecting their rights.

Statement of Policy

College employees, board members, and those affiliated with the College shall abide by applicable state and federal laws, as well as College policies and procedures. Any employee, board member or those affiliated with the College who has particular knowledge of specific acts that he or she reasonably believes constitute wrongful conduct, he or she should disclose the conduct to the Risk Management Officer, President, Provost, Vice President for Administration and Finance, or other as identified by the Board and who is not involved in the alleged misconduct.

Definition of Whistleblower

A whistleblower, as defined for purposes of this policy, is an officer, director, employee or volunteer of Fulton-Montgomery Community College who reports an activity that he or she reasonably believes to be wrongful conduct.

Definition of Wrongful Conduct

Wrongful conduct is defined as a serious violation of College policy; violating state and/or federal law; or misusing College property while performing one's duties as identified by the College.

Reporting and Investigating Suspected Wrongful Conduct

In many instances, suspected wrongful conduct is best made an officer of the College in writing and with the whistleblower's name disclosed in the document. Such reports generally allow for the most comprehensive investigation of the suspected wrongful conduct, and will be kept confidential to the greatest extent possible that is consistent with the need to conduct an adequate investigation and comply with applicable laws. Reports will be shared with the Board of Trustees of the College.

In cases where suspected wrongful activity is reported to an officer of the College, he or she will ensure that the activity is investigated and that the results of the investigation are reported to the College President and, where appropriate, to other College staff and/or the College's Board of Trustees.

The College's Board of Trustees maintains the right to reassign responsibility for the

investigation to a different person, if such reassignment is deemed prudent by the Board of Trustees.

Whistleblower Protections

No employee of Fulton-Montgomery Community College who in good faith reports suspected wrongful conduct shall suffer harassment, retaliation or adverse employment consequence. An employee who retaliates against someone who has in good faith reported suspected wrongful conduct shall be subject to discipline, which may be up to and including termination of employment.

Furthermore, employees who fear retaliation may choose to report suspected wrongful conduct anonymously. Such anonymous reports should generally be made to the (Risk Management Officer) (Vice President for Administration and Finance) (Other as identified by the Board). However, employees who fear retaliation may instead choose to report suspected wrongful conduct to the College's attorney. The College's attorney is hired by the College's Board of Trustees and would disclose such reports to the College's Board of Trustees.

The College's Board of Trustees shall assign responsibility for overseeing the investigation of suspected wrongful behavior that is reported to the College's attorney. This person, to whom the Board of Trustees assigns responsibility, may vary depending upon the nature of the allegation(s).

Acting in Good Faith

Any employee of Fulton-Montgomery Community College who reports suspected wrongful behavior must be acting in good faith and have a reasonable basis for believing that wrongful behavior has occurred. Allegations that are made maliciously or knowingly to be false will be subject to discipline, which may be up to and including termination of employment.

Veterans Parking Fee Waiver

Each year, the Board of Trustees approves a Tuition and Fee Schedule that includes the Campus Parking Fee for each student. In recognition of their service to the United States, veterans of the United States Armed Services are exempt from paying the parking fee while attending courses at Fulton-Montgomery Community College.

Policy Adopted: August 2013

Fulton-Montgomery Community College
Johnstown NY

Tuition Reduction Policy for Early College Programs

The President is authorized to enter into contracts with area school districts/BOCES for the purposes of creating early college high school programs. The President is also authorized to negotiate a reduction in tuition not to exceed a 2/3 reduction. Additionally, fees may be waived in cases where those fees do not directly impact the cost of operating the course(s) for each student.

Policy Adopted: May, 2014

Fulton-Montgomery Community College
Johnstown NY

PHYSICAL PLANT**POLICY****POLICY NUMBER**

Third-Party Use of Physical Facilities	8000
Camping and Use of Tents on Campus	8005
College Vehicles	8010
Smoking	8020
Use of Alcoholic Beverages	8030
Safety and Security	8040
Safety and Security: Campus Safety Act	8040a
Security Cameras	8041
Drug and Alcohol Free Workplace	8050
Animals on Campus	8060
Campus Posting	8070

*Policy section reviewed 2018-19

THIRD-PARTY USE OF FACILITIES**INTRODUCTION**

From time to time, Fulton-Montgomery Community College receives requests from Third Party organizations to use its facilities for events, meetings, public speaking engagements, ceremonies, etc. As a public entity, partially funded by tax dollars, the College must provide locations for the use of space and facilities by third parties for activities, meetings, etc.

This policy will apply to all third party organizations' events that are not sponsored or co-sponsored by the College nor a student organization or club. This policy does not apply to students, speakers officially sponsored by recognized student groups or clubs, sponsoring counties, faculty or staff as other reservations processes and policies apply to campus community members.

POLICY***A. Designated Space***

The College shall designate the following areas for use by third party organizations requesting use of College facilities. These locations shall be: the Quad for outside events (ceremonies, public speaking engagements, etc.) where an outside venue is requested; The Large Lounge in the Student Union, Raider's Cove in the Physical Education Building and/or the Event Room in the Allen House, loop road (walk-a-thons, etc.). All parties using these designated spaces must adhere to all regulations of the College.

B. Black-Out Days

The College reserves the right to designate "black-out" days in which no third party organization may be permitted to use any campus space or facilities, including indoor and/or outdoor spaces, based on the needs of the College to have the campus exclusively used for the College's core and primary educational mission. Examples of "black-out" day include: Opening Weekend for each semester, Commencement Week, Admissions Open House, etc.

C. Costs

The College shall not charge for the space used by third party organizations in accordance with Board policy. The College reserves the right to charge third party organizations for additional personnel (maintenance, security, etc.) that may be needed to service the requested activity. The College shall

charge the third party organization for any damage to facilities that occur during the use of facilities by the third party, its staff and/or participants.

D. Insurance

The College shall require the third party organization to provide a certificate of insurance in an amount designated by the College and consistent with all third party organizations prior to the event.

E. Content

The College shall not inquire as to the content of the event, discussion, speech, meeting, etc. as it supports the exercise of free speech on its campus.

F. Cleanliness

The College has a reasonable expectation that facilities will be exited with the same level of cleanliness in which they were occupied. The third party organization will pick up and properly dispose of any brochures, materials, handouts, goods, etc. that were brought to the event and/or used during the event and left behind.

G. Termination

The College reserves the right to terminate any use of the designated facilities or space in the event that either the speaker and/or a member(s) of the audience engages in conduct that violates campus policies, law or reasonable expectations of peaceful assembly in order to secure the orderly operation of the campus and for the safety of the entire campus community and all those within it.

H. Amplification

No amplification devices shall be used outside of those available from the College in designated areas. Amplification that disrupts the operations of the College and/or building in which an event is located shall be terminated upon the request of College officials.

I. Procedures

The College shall establish the procedures and an application forms necessary to implement this policy.

Policy Adopted: November 1974
Policy Revised: April 1980
Policy Revised: April 1984
Policy Revised: December 1984
Policy Revised: August 1994
Policy Revised: February 1995

Fulton-Montgomery Community College
Johnstown NY

Policy Revised: April 1995
Policy Revised: May 1995
Policy Revised: January 1999
Policy Revised: July 2006
Policy Revised: June 2019

Camping and Use of Tents on Campus**Purpose**

To set forth the State University of New York (SUNY) Campus policy on camping and the use of tents/canopies on campus.

Scope

Fulton-Montgomery Community College (FMCC) is committed to maintaining a clean, aesthetically pleasing, healthy, hygienic and safe work, educational, and living environment in order to effectively carry out its educational mission. FMCC is authorized to control its buildings and grounds consistent with the SUNY policies for use of facilities, which prohibit the use of college property or buildings for purposes unrelated to the regular programs and activities of the College.

Definitions***Camping:***

- In indoor or outdoor locations, the establishment of, evidence of an attempt to establish, or maintenance of temporary or permanent living quarters at any location on College property other than living quarters in residence halls and living quarters in apartments, or other College-managed housing—this includes the establishment of any indoor and/or outdoor encampment erected in connection with any lawful assembly of individuals pursuant to FMCC policies;
- Sleeping overnight in or under any parked vehicle; or
- Establishing or maintaining indoors or outdoors, or in or under, any structure not designated for human occupancy, at any time during the day or night, a temporary or permanent place for cooking, storing of personal belongings, or sleeping by setting up any bedding, sleeping bag, mattress, tent, hammock or other sleeping equipment, or by setting up any cooking equipment that has not been approved by the Office of Environmental Health and Safety.

Campus or Campuses is any College owned, leased, licensed or operated space, facility, property, grounds or building.

Canopy is a structure, enclosure or shelter constructed of fabric or pliable materials supported by any manner, except by air or the contents it protects, and is open without side walls or drops on 75 percent or more of the perimeter.

Permit is a written document prepared by the CEO issued to Campus Personnel to allow the set up and use of a tent or canopy for a specified amount of time. Permits may be revoked if permit conditions are not followed.

Tailgating – informal gathering from the back of a parked vehicle, typically in the parking lot of a sports stadium or event venue. Tailgating is permitted in the student parking lots. Tailgating space is limited to those patrons with an appropriate parking pass or permit. Access to the tailgating area may be limited to those patrons who have a valid game ticket for the contest being held that day.

Tent- any and all structures, enclosure or shelter constructed of any material, including but not limited to fabric or pliable materials supported by any manner.

Third Party or Parties is any person, organization, group or entity not affiliated with the College including, but not limited to, the general public, contractors, vendors, guests and visitors to the College, those using College facilities or property under a College revocable permit, and volunteers not enrolled as such on College systems.

College is FMCC.

Policy

- A. Camping is prohibited on State University Campuses.
- B. Exceptions
 - 1. Actions that constitute “camping” as defined above may be allowed with prior, written permission in the following limited circumstances:
 - a. With the advance written approval of the appropriate College President.
 - b. As approved as part of a revocable permit for Campus use pursuant to policy 8000.
 - c. Tailgating and tailgate parties are excluded from this policy
 - d. In extraordinary circumstances, such as times of natural disaster, when approved in writing in advance by the President of the College or their designee.
- C. Enforcement and Compliance
 - 1. The Office of Public Safety is responsible for addressing non-compliance with this policy by all persons and may address violations of this policy that constitute criminal trespass or any other violation of law.
 - 2. Students may be referred for discipline for alleged violation of this Policy.
- D. This Policy shall be effective immediately upon approval.

COLLEGE VEHICLES

The Board of Trustees recognizes that it is necessary for the College to maintain a variety of vehicles with which to conduct the business of the College. Among those vehicles shall be those necessary for transportation and for maintenance of the campus. The Board of Trustees directs the President to establish College regulations and procedures for use and maintenance of all College vehicles. College owned or leased vehicles are to be used solely for the purpose of College business. Specific exceptions may be approved by the Board of Trustees.

Procedures:**Authorized Vehicle Use:**

College vehicles are to be driven for College business only. This may include: attending approved conferences or meetings, conducting College sponsored educational field trips, or for athletic events, maintenance, or public safety. Personal use of College vehicles is prohibited. No unauthorized person(s) will be allowed to ride in College vehicles. Students and student employees are not authorized to reserve, sign out, or operate College-owned vehicles.

Driver Eligibility:

Persons operating FMCC vehicles must be authorized drivers in good standing as determined by the College. This determination includes the possession of an applicable, valid New York State Driver's license and an acceptable driving record according to the criteria outlined below. Before operating College bus, employees (with the exception of those staff that possess a valid, commercial driver license) will be required to complete and pass a Van Safety Class administered by the Director of Public Safety. An updated eligible driver roster will be maintained in Public Safety.

All operators of College vehicles will be enrolled by the New York State License Event Notification System (LENS) program. This program monitors licenses and will immediately notify Human Resources of license suspensions, revocations, motor vehicle violations, and convictions. Records will be confidentially monitored, maintained, and assessed according to the criteria below:

Unacceptable Driving Record:**Job Applicants:**

For positions where operation of College vehicles is deemed an essential function of the job (such as Public Safety, Buildings and Grounds CDL drivers), final candidates will have their motor vehicle records checked as part of the background check process. Applicants with the following driving records may be disqualified from hire.

Major Offenses:

1. Convicted for hit and run, eluding a police officer or fleeing the scene of an accident.
2. Convicted of assault with a motor vehicle or negligent vehicular homicide.
3. Current suspended or revoked license.
4. Convicted of DWI or DWAI in the last two years.
5. Convicted of permitting an unlicensed driver to drive.
6. Convicted of engaging in a speed contest.
7. Convicted for Illegal passing of a school bus.
8. Convicted for operating a vehicle without the owner's authority. (grand theft)
9. Convicted for reckless driving.
10. Two or more accidents in the last three years.
11. More than 9 points on your driving record in the past 3 years (from conviction date).

Current Employees:

Current employees with a major offense stated below will be immediately prohibited from operating any College-owned vehicle until further notice. And failure to follow a directive to discontinue driving a College vehicle may result in disciplinary action including dismissal:

1. A currently suspended or revoked license.
2. Conviction of DWI or DWAI in the last two years.

Adverse Record Process:

1. Upon notification of an adverse driving record the College will notify the employee, DPS and his/her direct supervisor that the individual is to immediately cease operation of College vehicles. Specific reasons for this removing driving privileges will be shared on a need-to-know basis.
2. The Director of Human Resources will provide the appropriate Vice President with the facts surrounding the driving injunction and recommend a course of action. The College shall have the discretion to:
 - a. Terminate the employee if the operating of a College vehicle is an essential function of his/her job and/or where absence of driving capability may critically impact the operation of the college.
 - b. Provide a temporary driving injunction until the adverse situation can be rectified (e.g., reinstatement of a suspended license).
 - c. Refer the employee to an Accident Prevention/Driver Ed course and restore driving privileges upon successful completion.
 - d. Refer the employee to an Accident Prevention/Driver Ed course for point reduction* and if points are reduced below maximum allowed per College policy, reinstate driving privileges.
 - e. Remove driving privileges indefinitely.

Vehicle Requests/Sign Out

The Buildings and Grounds Department shall be responsible for approving College bus (other than SGA) use requests. A “College Bus Request” form will be completed and submitted to BG for approval. Driver eligibility is verified against list generated by Public Safety. A vehicle return checklist will be signed by the driver and returned to B&G.

Use of Privately Owned Vehicles

Using private vehicles to **transport students** is prohibited. Using private vehicles to perform Maintenance and Public Safety business is strongly discouraged (however when College-owned vehicles are not available or are impractical to conduct Maintenance or Public Safety business, use of an employee owned vehicle may be authorized by that department’s supervisor). Drivers and owners should be aware that the owner’s automobile insurance is the primary responder to property damage and injury claims. Employees driving personal vehicles are indemnified for College liability while on approved College-related business. Employees are also covered by the FMCC Workers Compensation program while on approved College-related business.

Responsibility of Drivers:

- Immediately report personal driving suspensions and revocations, major violations to Human Resources.
- Inspecting the vehicle prior to departure. Any defects should be noted and corrected prior to departure.
- Keep drivers license, vehicle registration, and insurance documents with them at all times while driving.
- Weather conditions will be evaluated and travel should be curtailed when conditions are hazardous.
- No driver shall drive more than eight (8) hours in a single day and no more than three (3) hours without a rest break.
- Ensure the operators and all passengers wear seat belts at all times while traveling.
- Report all accidents as trained for “Driver’s Role at Accident Scene”.
- All accidents involving College vehicles, regardless of severity, must be reported to the police and to DPS. Failure to stop after an accident and/or failure to report an accident may result in disciplinary action including dismissal.
- Security of the vehicles being used by them: engine shut off, ignition keys removed, and door locked whenever the vehicle is unattended.
- Observe all applicable federal, state, and local motor vehicle laws.

1/23/13

Policy Adopted: January 1994
Policy Revised: October 1998
Policy Reviewed: July 2006, 2019

Fulton-Montgomery Community College
Johnstown NY

SMOKING

In compliance with New York's Clean Indoor Air Act in Educational Institutions, Fulton-Montgomery Community College will provide a safe and healthy environment which is as tobacco free as possible for all employees, students, and visitors. Tobacco use is prohibited in all College buildings, including buildings and/or space leased, rented, or utilized under other arrangements, by the College. Tobacco use is permitted outside of College buildings only in designated smoking areas. This policy will be posted and distributed to all College employees.

For the purpose of this policy, tobacco is defined as any type of tobacco product including, but not limited to, cigarettes (commercial, handmade, electronic), cigars, cigarillos, pipes, hookahs, oral tobacco (spit and spitless, smokeless, chew, snuff), vaping, or any other smoking material or device.

Policy Revised: May 1994
(previously Personnel 4150)

Policy Revised: August 1997

Policy Reviewed: July 2006, 2019

Policy Revised: December 2015

Fulton-Montgomery Community College
Johnstown, NY

USE OF ALCOHOLIC BEVERAGES

Alcoholic beverages may not be consumed, sold, distributed or served anywhere on the campus.

Specific exceptions may be approved by the President or his/her designee. Only non-alcoholic beverages may be served and/or sold at student-sponsored events.

Policy Adopted: November 1995
Policy Reviewed: July 2006, 2019

Fulton-Montgomery Community College
Johnstown, NY

CAMPUS SAFETY, SECURITY, WORKPLACE VIOLENCE PREVENTION & INCIDENT REPORTING

Fulton-Montgomery Community College is committed to the safety and security of our students, employees, guests. Workplace violence presents a serious occupational safety hazard to our agency, staff, and clients. Threats, threatening behavior, or acts of violence against employees, visitors, guests, or other individuals by anyone on Fulton-Montgomery Community College property will be thoroughly investigated and appropriate action will be taken, including summoning criminal justice authorities when warranted. All employees are responsible for helping to create an environment of mutual respect for each other as well as clients, following all policies, procedures and program requirements, and for assisting in maintaining a safe and secure work environment.

This policy is designed to meet the requirements of the 2009 NYS Labor Law 27b and highlights some of the elements that are found within our Workplace Violence Prevention Program. The process involved in complying with this law included a workplace evaluation that was designed to identify the workplace violence hazards our employees could be exposed to. Other tools that were utilized during this process included establishing a committee made up of management and Authorized Employee Representatives who will have an ongoing role of participation in the evaluation process, recommending methods to reduce or eliminate the hazards identified during the process and investigating workplace violence incidents or allegations. All employees will participate in the annual Workplace Violence Prevention Training Program.

The goal of this policy is to promote the safety and well-being of all people in our workplace. All incidents of violence or threatening behavior will be responded to immediately upon notification. Fulton-Montgomery Community College has identified response personnel that include a member of management and an employee representative. If appropriate, the Fulton-Montgomery Community College will provide counseling services or referrals for employees.

The College will implement and maintain a plan providing for the investigation of any violent felony offense occurring at or on the grounds of Fulton-Montgomery Community College, and providing for the investigation of a report of any missing student. Such plan shall provide for the coordination of the investigation of such crimes and reports with the local law enforcement agencies. Such plan shall include, but not be limited to, written agreements with appropriate local law enforcement agencies providing for the prompt investigation of such crimes and reports. In addition, in accordance with NYS Labor Law 27b, FMCC will develop and maintain a Workplace Violence Prevention Program. Any intentional act of intimidation, threat of violence, or act of violence committed against any person or to the property of another while on the property of FMCC is prohibited. All Fulton-Montgomery Community College personnel are responsible for notifying the contact person designated below of any violent incidents, threatening behavior, including threats they have witnessed, received, or have been told that another person has witnessed or received. Any FMCC employee found to be in violation of this policy (including knowingly filing a false report or failing to cooperate during an investigation)

shall be subject to disciplinary action, up to and including dismissal, pursuant to applicable Personnel Policies or Collective Bargaining Agreements.

Any FMCC employee who is the subject of, or a witness to, a suspected violation of this policy should report the violation according to College procedures to the next-in-line supervisor who is not a party to the violation.

Designated Contact Person:

Director of Public Safety, Chief Law Enforcement Officer

Public Safety

736-3622 x8406

Physical Education Building, P144

Or

his/her designee in their absence.

Policy Adopted: October 1996
Policy Reviewed: July 2006, 2019
Policy Revised January 2013

Fulton-Montgomery Community College
Johnstown NY

SAFETY AND SECURITY: CAMPUS SAFETY ACT

Fulton-Montgomery Community College will implement and maintain a plan providing for the investigation of any violent felony offense occurring at or on the grounds of Fulton-Montgomery Community College, and providing for the investigation of a report of any missing student. Such plan shall provide for the coordination of the investigation of such crimes and reports with the local law enforcement agencies. Such plan shall include, but not be limited to, written agreements with appropriate local law enforcement agencies providing for the prompt investigation of such crimes and reports.

Policy Adopted: December 1999
Policy Reviewed: July 2006, 2019

Fulton-Montgomery Community College
Johnstown NY

SECURITY CAMERAS

Fulton-Montgomery Community College reserves the right to place video surveillance cameras (no audio) on campus where necessary and appropriate in order to protect people or property. Cameras will be used in a professional, ethical, and legal manner and consistent with all state and federal laws, college policies, and collective bargaining agreements and in a manner that does not violate reasonable expectations of privacy. The Director of Public Safety will manage the operations of the security camera system.

Policy Adopted: August 2011
Policy Reviewed: July 2019

Fulton-Montgomery Community College
Johnstown NY

DRUG AND ALCOHOL-FREE WORKPLACE

The Federal Drug Free Workplace Act imposes responsibilities on all recipients of federal grants and contracts, including institutions participating in campus-based student financial aid programs. In compliance with this provision, the Board of Trustees of Fulton-Montgomery Community College is committed to maintaining a safe and healthy work environment free from the influence of alcohol and drugs. Fulton-Montgomery Community College prohibits unauthorized use, possession (including storage in a desk, locker, car or other repository), manufacture, distribution, dispensation or sale of illegal drugs, drug paraphernalia, controlled substances, or alcohol on FMCC premises or on FMCC business in FMCC supplied vehicles or during working hours. No employee will report to work while under the influence of alcohol or any unlawful controlled substance. Violation of this policy by any employee may result in referral for mandatory evaluation/treatment for a substance abuse disorder and/or disciplinary action up to and including termination of employment.

Employees have the right to know the dangers of drug and alcohol abuse in the workplace, the policy about them, and what help is available to combat drug and alcohol problems. Information is available at the College on the dangers of drug and alcohol abuse, through the Office of Human Resources. The College will also provide information on community resources available for drug and alcohol counseling programs.

Policy Adopted: June 1997
Policy Reviewed: July 2006, 2019

Fulton-Montgomery Community College
Johnstown, NY

ANIMALS ON CAMPUS

Due to the liability risk to the College, any animals (mammals, birds, reptiles, and insects) belonging to or in the care of employees of the College, students enrolled at the College, visitors to the College, or anyone else working at the College, are prohibited from the main part of the campus, including all buildings, parking lots, and grounds adjacent to buildings. Animals, except for horses, are allowed on other parts of the campus as long as they are leashed, tethered, caged, or secured at all times. The only exceptions to this policy are trained animals used by sight, hearing, and physically impaired persons; animals used and owned by the College in classrooms and laboratories for instructional purposes; and other situations authorized by the President of the College.

Policy Adopted: October 1997
Policy Reviewed: July 2006, 2019

Fulton-Montgomery Community College
Johnstown, NY

CAMPUS POSTING

Policy Statement

It is the policy of the Fulton-Montgomery Community College (FMCC) to ensure that recognized student organizations, university programs, departments, and units that want to share information about upcoming events and activities are able to do so through various means of communication, including flyers and posters.

Rationale

FMCC reserves the right to manage posting and advertising on its campuses in order to maintain an orderly and attractive venue, to make event information accessible to the campus community, and to ensure that events and programs that are advertised comply with institutional policies and procedures.

Applicability of the Policy

This policy sets forth the requirements for all student organizations, college programs, departments, and units recognized by FMCC that wish to post items on campus general-use bulletin boards. This policy does not apply to bulletin boards that are reserved for specific departments, offices, or organizations whereby posting generally requires permission of that group.

For policy on entities and individuals who wish to use FMCC facilities for other than approved college-sponsored academic, administrative, and extra-curricular activities, please refer to Policy 8000.

Procedures

Announcements, letters, bulletins, posters, flyers, postcards, sandwich boards, etc., promoting or describing an event, meeting, program, etc., must clearly indicate the sponsoring group/organization and phone number or email address of a contact person, including who students may contact for reasonable accommodations. Promotions for events not sponsored by FMCC must clearly indicate the sponsoring group and phone number or email address of a contact person and explicitly indicate that the event is not sponsored by FMCC.

Posted items are to be posted only on general-use bulletin boards identified for this purpose.

Prohibited posting activities include without limitation: posting of promotional flyers or leaflets on doors, windows, trees, light poles, vehicles, bus stops, indoor and outdoor walls and in elevators; promotion of events that advertise alcohol or drugs or any event that violates the law and/or the FMCC code of conduct; chalking of buildings, sidewalks, or roadways; any promotional material not endorsed by a student organization, college program, department and/or unit.

Postings may not be placed over current/valid postings of other organizations, and students are prohibited from removing or tearing down current/valid postings of other organizations. Multiple postings in the same location are prohibited.

Items posted that do not follow the policy guidelines will be removed. Repeated violations will result in a loss of posting privileges and possible disciplinary action.

Contacts

Questions related to the daily operational interpretation of this policy should be directed to: the Coordinator of Student Involvement.

Policy Adopted: October 1997
Policy Reviewed: July 2006, 2019
Policy Revised: September 2024

Fulton-Montgomery Community College
Johnstown, NY