



FULTON-MONTGOMERY COMMUNITY COLLEGE

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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

FMCC Policy on Sexual Misconduct Prevention and Response

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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.
 - 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.lasnny.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>.
- o 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.
 - o 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:
 - o Davida Capece, Public Safety Office, Physical Education Building, P144, 518-736-3622 ext. 8405, dcapece@fmcc.edu.
 - o 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.
 - o 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.unityhousesny.org/	No cost
Equinox Domestic Violence Services	P: 518-434-7865 W: http://www.equinoxinc.org/whatwedo/dv.php	No 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
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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.glbtqdv.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 intervention, 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 Processes¹

	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.

¹ 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.

	Criminal Justice System	FMCC Disciplinary System
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).
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.

	Criminal Justice System	FMCC Disciplinary System
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.
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: <ul style="list-style-type: none"> • 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.